

1 COURT ATTENDANT: All rise. Department 45 of the  
2 Sacramento Superior Court is now in session. The honorable  
3 Judge Judy Hersher now presiding. You may be seated.

4 THE COURT: All right. Who is our next witness?

5 MS. CLEMENT: Doris Marshall, your Honor. Plaintiffs  
6 call her under 776.

7 THE COURT: Okay. Ms. Marshall, if you would please  
8 come forward to our witness stand. If you want to put your  
9 sweater over the table right there. Please remain standing,  
10 raise your right hand, and face the clerk.

11 THE CLERK: Do you solemnly swear that the testimony  
12 you are about to give in the cause now pending before this  
13 Court will be the truth, the whole truth, and nothing but  
14 the truth?

15 THE WITNESS: Yes.

16 THE CLERK: You may have a seat, please.

17 Can you spell your -- I'm sorry. Can you say your  
18 name and spell it, please?

19 THE WITNESS: Doris Marshall, D-o-r-i-s,  
20 M-a-r-s-h-a-l-l.

21 THE CLERK: Thank you.

22 MS. CLEMENT: Thank you.

23 TESTIMONY OF

24 DORIS MARSHALL, Witness called under Evidence Code 776 on  
25 behalf of the Plaintiffs,

26 CROSS-EXAMINATION

27 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
28 the Plaintiffs:

1 Q Ms. Marshall, there is water right there in that  
2 pitcher if you need some or would like some.

3 Ms. Marshall, can you please tell the jury, um, how  
4 long you've been a registered nurse?

5 A Um, since 1984, so about almost 30 years.

6 Q And has your career been primarily as a trauma nurse  
7 in the emergency room?

8 A Yes.

9 Q And then you became the director of nursing of a  
10 licensed vocational nursing school?

11 A Yes.

12 Q And then in March, late March of 2008 you, um, came  
13 to -- late March of 2008 you came to Emeritus?

14 A Yes.

15 Q And, um, you were hired by Budgie Amparo to be the  
16 regional director of quality services for region one?

17 A Yes.

18 Q And that region includes Emerald Hills?

19 A Yes, it did.

20 Q And you worked for Emeritus as the regional director  
21 of quality services until late September 2010?

22 A Yes. Somewhere around there.

23 Q Now, when you first came to Emeritus, um, what were  
24 you told that your job duties would be? What were you told  
25 the role was as regional director of quality services?

26 A Um, originally when I spoke to Budgie it was one in  
27 which nurses were -- had a voice. They were pretty highly,  
28 um, looked at. Um, it would also deal with managing

1 assisted living communities between, I think, Napa, Lodi and  
2 the Auburn area.

3 Q And had you ever had any experience with assisted  
4 living facilities?

5 A No.

6 Q And did this look like a new challenge for you?

7 A Definitely, yes.

8 Q And were you moving from southern California to the  
9 Sacramento area or had you just moved from southern  
10 California to Sacramento?

11 A Yes, I had just moved here.

12 Q And why did you move up here?

13 A Um, I was going through a divorce at the time and my  
14 family is up here, so it was pretty good for me to move  
15 back.

16 Q And once you started in this job as the regional  
17 director of quality services did you, over a few months,  
18 learn that your job, as described by Mr. Budgie Amparo, was  
19 not the job you were actually being asked to do?

20 A Yes. It was a little bit more than what I assumed it  
21 would be.

22 Q Did you, um, learn over the course of your employment  
23 with Emeritus that what was expected of you was really very  
24 little nursing?

25 A Yes.

26 Q And what was the primary responsibility that you had  
27 as the regional director of quality services?

28 A It dealt more with, um, what they consider to be

1 "closing the back door", um, monitoring move-outs, you know,  
2 assisting with move-ins in the community was the biggest  
3 part.

4 Q We used this phrase "closing the back door". What  
5 does that mean at Emeritus?

6 A Actually, um, it meant to retain the residents as long  
7 as you possibly can and also to put systems in place to keep  
8 the residents that we could, those controllable move-outs.

9 Q What -- what did Emeritus consider to be it's only  
10 uncontrollable move-outs?

11 A Deaths.

12 Q Over the course of your employment at Emeritus did you  
13 come to learn that it was expected of you to cover up  
14 mistakes that happened in the clinical side of care in  
15 Emeritus facilities?

16 A Yes.

17 Q So would it be fair to say that the regional director  
18 of quality services was really more of a regional director  
19 of cover-up for Emeritus?

20 A It -- it could say -- yes. Yes.

21 Q How about this term "heads in the beds", we have heard  
22 testimony from Budgie Amparo and Lisa Hulse that they have  
23 never heard that phrase uttered before. Have you heard that  
24 phrase uttered before by Mr. Amparo, We need heads in the  
25 beds?

26 A Yes, I have heard that.

27 Q You heard that phrase uttered by Lisa Hulse, We need  
28 heads in the beds?

1 A Yes.

2 Q And was that with regard to filling the buildings,  
3 that they needed to have more residents, in other words, the  
4 residents' heads in Emeritus beds?

5 A Yes.

6 Q Was the first time you had ever heard that term "heads  
7 in the beds" uttered by Budgie Amparo himself?

8 A No. I have heard that outside of Budgie, yes.

9 Q But you heard Budgie utter it, and you heard Lisa  
10 Hulse say that as well?

11 A Yes.

12 Q And I'm going to ask you to, please, turn now to  
13 Exhibit Number 264.

14 **(Joint Exhibit 264 was marked for identification.)**

15 MS. CLEMENT: Your Honor, would it be permissible for  
16 me to approach and hand the witness, um, a copy that's not,  
17 um, so hard to get out of the binder?

18 THE COURT: She can open it up and take it out of the  
19 binder.

20 MS. CLEMENT: Okay. Thanks, Judge.

21 Q (By MS. CLEMENT) We have heard testimony so far in  
22 this case, um, Ms. Marshall, that there was never a in -- a  
23 requirement that Emeritus have its regional and facility  
24 level team members increase the level of care of the  
25 residents they were accepting.

26 When you first came on board at Emeritus, did you  
27 learn that, in fact, that was exactly the plan of Emeritus,  
28 to increase the level of care across the board at the

1 facilities that you were overseeing?

2 A Yes.

3 Q And were you given, in fact, a planning and tracking  
4 dashboard by Emeritus with level of care targeting?

5 A Yes.

6 Q And is Exhibit 264 the level of care targeting for  
7 increasing level of care in region one that you were given  
8 after you started at Emeritus?

9 A Yes.

10 MS. CLEMENT: At this time, your Honor, Plaintiffs  
11 would seek to move into evidence Exhibit 264.

12 THE COURT: Any objection?

13 MR. REID: I think the document is hearsay, your  
14 Honor.

15 THE COURT: I'm sorry, is this an Emeritus document?

16 MR. REID: Um, actually, I don't know. I have never  
17 seen it before.

18 MS. CLEMENT: Shall I lay more of a foundation, your  
19 Honor?

20 THE COURT: Go ahead, please.

21 Q (By MS. CLEMENT) Exhibit 264, is this a document that  
22 was given to you by Emeritus?

23 A Yes.

24 MR. REID: It's vague as to Emeritus.

25 MS. CLEMENT: This document --

26 THE COURT: I was going to say let's go inches on this  
27 one so we can see where we are going.

28 MS. CLEMENT: Okay.

1 Q (By MS. CLEMENT) How did you get Exhibit 264, the  
2 level of care targeting and dashboard for region one?

3 A At the time I started Don Zimmerman, he was a new  
4 regional director of operations, and the regional team had  
5 to meet together to discuss how we can increase the level of  
6 care before we met in our profit and loss statement  
7 meetings.

8 Q Okay. And those profit and loss statement meetings,  
9 were those the EBITDAR meetings?

10 A It was called something else prior to, but yes.

11 Q And was it your understanding that this level of care  
12 targeting and planning and tracking dashboard, Exhibit 264,  
13 was provided to you and Mr. Zimmerman from Emeritus  
14 Corporate?

15 MR. REID: That lacks foundation, calls for hearsay as  
16 phrased, your Honor.

17 THE COURT: As phrased it doesn't call for hearsay.  
18 It's her understanding. We have to figure this out a little  
19 bit more.

20 You can answer.

21 THE WITNESS: Could you repeat that, please?

22 MS. CLEMENT: Yes.

23 Q (By MS. CLEMENT) Is it your understanding that  
24 Exhibit 264 came from Emeritus Corporate?

25 A Yes. It was sent to me and to the regional team.

26 Q And did it come from Seattle, to your understanding?

27 A Yes.

28 MS. CLEMENT: At this time Plaintiff seeks to move

1 into evidence Exhibit 264.

2 THE COURT: Any objection?

3 MR. REID: Um, no, your Honor.

4 THE COURT: All right. 264 is admitted.

5 **(Joint Exhibit 264 was admitted into evidence.)**

6 MS. CLEMENT: By this -- thank you, Terrance.

7 And if you could, please, put up the first section  
8 that we talked about?

9 Q (By MS. CLEMENT) So this was Mr. Zimmerman, and he  
10 was the first regional director of operations you worked  
11 with in 2008?

12 A Yes.

13 Q Okay. Next section, Erik?

14 And was this -- to your understanding was your charge  
15 to work to increase the level of care of the residents that  
16 Emeritus was accepting and retaining by 25 percent for the,  
17 um, quarter beginning June of 2008?

18 A Yes.

19 Q And that by the quarter beginning September 2008 that  
20 that would -- excuse me -- ending September 2008 that that  
21 level of care would go up to 50 percent?

22 A Yes.

23 Q And by December go up to 75 percent?

24 A Yes.

25 Q And that was for the ten facilities that you had when  
26 you first started; true?

27 A Yes.

28 Q And that region one -- if you can take us down just to



1 show us the planning data on the left there? Can you make  
2 that bigger on the left? Just to show the communities.

3 That included Emerald Hills; true?

4 A Yes.

5 Q And when you first started you were responsible as the  
6 regional director of quality services as the head nurse for  
7 all of those facilities; true?

8 A Yes.

9 Q And that was about 800 residents?

10 A Yes.

11 Q And at that time it ranged from Napa to Lodi to  
12 Orangevale, Fairfield, Vacaville, all the way up to Auburn?

13 A Yes.

14 Q Okay. Thank you.

15 Can you turn to Exhibit 265, please?

16 **(Joint Exhibit 265 was marked for identification.)**

17 Q (By MS. CLEMENT) Is Exhibit 265 an e-mail you  
18 received on Monday, July 14th from Catherine Ratelle, the  
19 vice president of operations, regarding sales comes first?

20 A Yes.

21 Q And were all of the western division or California  
22 division executive directors, um, sent this, according to  
23 this e-mail?

24 A Yes.

25 MR. REID: That's hearsay and lacks foundation, your  
26 Honor.

27 THE COURT: I think that's -- I think -- are you  
28 referencing to the item on the document itself?

1 MS. CLEMENT: Yes, your Honor.

2 MR. REID: Okay, your Honor.

3 THE COURT: Overruled.

4 Q (By MS. CLEMENT) And did you, as a regional director  
5 of quality services, receive this e-mail?

6 A Yes.

7 MS. CLEMENT: At this time Plaintiffs would seek to  
8 move into evidence Exhibit 265, your Honor.

9 THE COURT: Any objection?

10 MR. REID: No, your Honor.

11 THE COURT: All right. 265 is admitted.

12 **(Joint Exhibit 265 was admitted into evidence.)**

13 MS. CLEMENT: Okay. Can you bring it up big, Erik?

14 Q (By MS. CLEMENT) Justin Hutchens' name is highlighted  
15 there. Did you understand Justin Hutchens to be the chief  
16 operating officer of Emeritus?

17 A Yes.

18 Q Did you see Lisa Hulse is also copied on this?

19 A Yes.

20 Q And Angela Neale, she was the sales and marketing vice  
21 president for California at the time?

22 A Yes.

23 Q Audrey Withers, she was the California human resources  
24 person?

25 A Yes.

26 Q And John Cincotta, he was the, um -- one of the heads  
27 of sales and marketing at corporate headquarters?

28 A Yes.

1 Q And the importance was "high"?

2 A Yes.

3 Q And it was directed to the executive directors.

4 Was it your understanding that, um, Ms. Ratelle was  
5 asking the executive directors to make sales and their  
6 commitment to sales their highest priority?

7 A Yes.

8 Q And was that your experience at Emeritus over the two  
9 years that you worked there, that sales and filling the  
10 building was the highest priority of this company?

11 A Yes.

12 Q And can you bring, um, us down to the next section?  
13 Thank you.

14 Can everyone read that? Is that big enough?

15 And were the executive directors told they were being  
16 held responsible for census and occupancy growth?

17 A Yes.

18 Q And were they told that their commitment to sales  
19 needed to be number one on their list of priorities?

20 A Yes.

21 Q Is this typical of a communications that you received  
22 during the course of your employment at Emeritus?

23 MR. REID: That is vague and overbroad, your Honor.

24 THE COURT: Sustained.

25 Q (By MS. CLEMENT) Was communications made during the  
26 course of your employment -- strike that.

27 Was it common for you to receive communications during  
28 the course of your employment that sales were number one?

1 A Yes.

2 Q We will turn to Exhibit 266, please.

3 **(Joint Exhibit 266 was marked for identification.)**

4 Q (By MS. CLEMENT) Is this an e-mail that you received  
5 from Justin Hutchens, the chief operating officer of  
6 Emeritus, on Friday, October 24th, 2008?

7 A Yes.

8 Q And it was sent to all regional directors?

9 A Yes.

10 Q And copied John Cincotta, the, um, head of sales at  
11 the time in Seattle?

12 A Yes.

13 MS. CLEMENT: Your Honor, at this time Plaintiffs  
14 would seek to move into evidence Exhibit 266.

15 MR. REID: No objection, your Honor.

16 THE COURT: 266 is admitted.

17 **(Joint Exhibit 266 was admitted into evidence.)**

18 Q (By MS. CLEMENT) Did Mr. Hutchens, the chief  
19 operating officer, tell you and other members of the team in  
20 this e-mail that there was an urgent focus on sales volume  
21 over the course of the next several months at Emeritus?

22 A Yes.

23 Q And that they wanted the sales force in general to  
24 avoid participation in comprehensive process reviews, or  
25 CPRs, or any other non-revenue -- revenue generating  
26 activity?

27 A Yes.

28 Q And they were counting on all of you regional

1 directors to drive sales?

2 A Yes.

3 Q And was that the message that you continually received  
4 at Emeritus, that there was an urgent focus on sales,  
5 volume?

6 A Yes.

7 Q And was that focus -- did that focus override the  
8 concern for resident care in your opinion in working with  
9 this company?

10 A Yes.

11 Q This "close the back door" concept, was that something  
12 that was made known at all levels of the company in your  
13 experience from the caregiver, med tech, up to the nurse  
14 executive director, regional team division, all the way up  
15 to the top of the company?

16 A Yes.

17 MS. CLEMENT: At this time I would ask you to look at  
18 Exhibit Number 268.

19 THE COURT: 26...

20 MS. CLEMENT: 8. 8.

21 THE COURT: 8?

22 MS. CLEMENT: Yes, your Honor.

23 **(Joint Exhibit 268 was marked for identification.)**

24 Q (By MS. CLEMENT) Is this an e-mail chain that you  
25 received from, um, Nicole Jackson and a young lady named  
26 Kimberly Moes, wellness coordinator at Emerald Hills?

27 A Yes.

28 Q And did you receive this on April 2nd, 2009?

1 A Yes.

2 Q And did Ms. Kimberly Moes, the wellness coordinator at  
3 Emeritus Emerald Hills, was she a licensed nurse?

4 A No, she wasn't.

5 Q At that time was there a licensed nurse at Emerald  
6 Hills?

7 A I don't believe there was.

8 Q To your understanding as the regional director of  
9 quality services, did Emeritus make a decision to not  
10 replace the, um, resident care director nurse position when  
11 that nurse left, Peggy Stevenson, and instead put in  
12 Ms. Moes as a wellness coordinator as an effort to save  
13 money?

14 A Yes. We needed someone -- yes.

15 Q And Ms. Moes, what was her experience, to your  
16 understanding, prior to coming to, um, the Emerald Hills  
17 facility to be the wellness coordinator?

18 A I believe Kim worked at another assisted living  
19 community. Her -- so she had an experience in assisted  
20 living as a med tech, I think.

21 Q Was it your understanding she came from a Emeritus  
22 assisted living facility in region one where she worked as a  
23 med tech?

24 A Yes.

25 Q Okay. And then was it your understanding that  
26 Ms. Moes, um, was moved from facility to facility to fill in  
27 when they didn't have a resident care director?

28 A Yes.

1 Q Was it your understanding that Ms. Moes actually  
2 participated in comprehensive process reviews?

3 A Yes.

4 Q And she would do the quality services or nursing  
5 section?

6 A Yes.

7 Q And in this particular e-mail exchange, um, was  
8 Ms. Moes having questions concerning how, um, the med techs  
9 could administer or assist with administering insulin?

10 A Yes.

11 MS. CLEMENT: At this time, your Honor, Plaintiffs  
12 would seek to move into evidence Exhibit 268.

13 THE COURT: Is there any objection?

14 MR. REID: No, your Honor.

15 THE COURT: 268 is admitted.

16 **(Joint Exhibit 268 was admitted into evidence.)**

17 Q (By MS. CLEMENT) Is this Nicole's e-mail?

18 A Yes.

19 Q And did Ms. Moes -- was she writing to see if the med  
20 techs would be able to count the clicks on the insulin pen  
21 while coaching the resident through the entire process, that  
22 the resident would turn the dial and administer her own  
23 shot?

24 A Yes.

25 Q And did she say, This one would close the back door  
26 one more time for Emerald Hills?

27 A Yes.

28 Q Let's move to Exhibit 272.

1           **(Joint Exhibit 272 was marked for identification.)**

2           Q        (By MS. CLEMENT) Is this a letter that you wrote to  
3 Nancy Cordova in -- on September 22nd, 2008?

4           A        Yes, it is.

5           Q        And, um, were you telling Ms. Cordova that you were  
6 planning a, um, comprehensive process review at the Emerald  
7 Hills facility for Wednesday, October 1st, from 9:00 to  
8 5:00?

9           A        Yes.

10          Q        And you listed out for her, oh, a lot of things that  
11 she needed to get ready, correct?

12          A        Yes.

13          Q        Okay. And you told her that a written report of the  
14 findings would be provided within 14 days from the date of  
15 the exit conference; is that right?

16          A        Yes.

17          Q        And then the community or Ms. Cordova would be  
18 expected to complete a plan of action ten days of the date  
19 of her receiving the written results of the CPR?

20          A        Yes.

21               MS. CLEMENT: Okay. At this time, your Honor,  
22 Plaintiffs would seek to move into evidence Exhibit 272.

23               THE COURT: Is there any objection?

24               MR. REID: No, your Honor.

25               THE COURT: All right. 272 is admitted.

26               **(Joint Exhibit 272 was admitted into evidence.)**

27               MS. CLEMENT: I'm not going to put that up, Erik. I  
28 will just move on.



1           So now let's go to -- I went backwards -- Exhibit 271.

2           **(Joint Exhibit 271 was marked for identification.)**

3           Q       (By MS. CLEMENT) Do you recognize Exhibit 271 as a  
4           comprehensive process review for Emerald Hills?

5           A       Yes.

6           Q       Was this the comprehensive process review that was  
7           completed in 2008?

8           A       Yes, it is.

9           Q       The one that began on October 1st, 2008, based on your  
10          letter?

11          A       Yes.

12          Q       Okay. We have heard testimony in this trial and seen  
13          evidence in an interrogatory response that, um, vice  
14          president of quality services Lisa Hulse could not find this  
15          comprehensive process review for 2008.

16          MR. REID: That question assumes facts not established  
17          and it lacks foundation.

18          THE COURT: Ladies and gentlemen, you have been  
19          sitting and listening to the testimony. I remind you that  
20          what an attorney may say may or may not be accurate, may or  
21          may not be true. You are the ultimate arbitrator of that.

22          Go ahead.

23          MS. CLEMENT: Thank you, your Honor.

24          Q       (By MS. CLEMENT) When the comprehensive process  
25          review was completed, did you forward a copy of this to  
26          Ms. Hulse?

27          A       Yes.

28          Q       And then during the course of your employment and

1 while this litigation was -- the discovery process was going  
2 on, were you asked to produce a copy of this CPR result  
3 again?

4 A Yes.

5 Q And did you provide it to Ms. Hulse again?

6 A Yes.

7 MS. CLEMENT: At this time, your Honor, Plaintiffs  
8 would seek to move into evidence Exhibit 271.

9 MR. REID: No objection.

10 THE COURT: 271 or 272?

11 MS. CLEMENT: Did I misspeak?

12 THE COURT: 271 and 272?

13 MS. CLEMENT: Yes, both of those. 272 was the letter  
14 and 271 is the CPR.

15 MR. REID: No objection, your Honor.

16 THE COURT: All right. 271 and 272 are admitted.

17 **(Joint Exhibit 271 was admitted into evidence.)**

18 MS. CLEMENT: Thank you, Terrance.

19 Q (By MS. CLEMENT) Is this document created in an Excel  
20 spreadsheet?

21 A Yes, it is.

22 Q And if you can turn to page 26 of 68? Is this the  
23 memory care section -- can you make that bigger so we can  
24 read it, please? Let's do it section by section.

25 Can you read that? Okay.

26 A Yes.

27 Q Now, is it your -- we have heard that Ms. Boice moved  
28 into the facility on September 12th, 2008, and it's your

1 understanding that the memory care program section of the  
2 comprehensive process review was done on October 1st, 2008;  
3 is that true?

4 A Yes. Yeah.

5 Q And the individual who filled this out was a  
6 Ms. Lawanda Gavin?

7 A Yes.

8 Q And she is a nurse?

9 A No, not at that time. No.

10 Q What was your understanding of what Ms. Gavin's role  
11 was at that time?

12 A I think she is a memory care director at Folsom.

13 Q And that was a Emeritus facility?

14 A Yeah. She was at Folsom. I know she worked in the  
15 memory care. I don't know if she was actually the director.

16 Q Okay. And she is the person who filled -- who did the  
17 CPR for the Memory Care Unit where Mrs. Boice lived; true?

18 A Yes.

19 Q And so for this comprehensive process review the  
20 maximum points you can get on any, um, audit item is 5 for  
21 full compliance; is that --

22 A Yes.

23 Q And then if there is partial compliance you get 3  
24 points and non-compliance is zero points; true?

25 A Yes.

26 Q So in order to know how many total points you can get  
27 on this program, the memory care program section, you add up  
28 how many total sections there are, times it by five, and

1 that is how you get your total?

2 A Yes.

3 Q Okay. So the first section was, um, whether the staff  
4 assigned to the Memory Care Neighborhood had received their  
5 "join their journey" orientation within 30 days of hire or  
6 less. How did they score on that?

7 A They got a zero on that one.

8 Q Okay. So would we give them a F grade for that one?

9 A Yes.

10 Q And then orientation checklist for memory care -- oh,  
11 let me just back it up. "Join their journey", that's  
12 Emeritus', um, marketing tool they use to tell families how  
13 specialized their caregivers are and highly trained in  
14 dementia care; true?

15 A Yes.

16 Q And this is a program that Emeritus, um, advertises on  
17 it's Web site and in its brochures?

18 A Yes.

19 Q And this is a program that is supposed to educate  
20 employees on how to care for residents with dementia; true?

21 A Yes.

22 Q So then on the orientation checklist for memory care  
23 director to see whether the memory care director had  
24 actually been oriented to her position within 45 days of  
25 the -- of her hire, how did they score on that?

26 A A zero, non-compliant.

27 Q Okay. They did get 5 points for non-rotating staff  
28 assignments being in place; true?

1 A Yes.

2 Q Okay. And then how did they score for whether they  
3 were actually conducting their training for "join their  
4 journey" on a monthly basis to all memory care staff?

5 A Non-compliant.

6 Q And the last item, how did they score on that, team  
7 member board?

8 A It's not filled in.

9 Q Okay. So no -- no points for that?

10 A None.

11 Q Okay. So for team development for the memory care  
12 program, would you give them a grade of F?

13 A Yes.

14 Q Okay. And then we go down to life enrichment. Um, is  
15 it your understanding through your employment with Emeritus  
16 that Emeritus, um, tells families that the memory care  
17 program is an activities focused program?

18 A Yes.

19 Q And is it your understanding and, um, training through  
20 Emeritus that residents with dementia need to have  
21 stimulation so they don't become depressed and withdrawn?

22 A Yes.

23 Q And how did Emeritus score on having an activity  
24 calendar that was being followed with staff leading the  
25 activities?

26 A Non-compliant.

27 Q And how about for program guidelines are in places as  
28 evident by an activity calendar?

1 A They were non-compliant.

2 Q And how about memory care stations, were they present  
3 and stocked?

4 A No, they are non-compliant.

5 Q So memory care stations, that was supposed to be  
6 stations throughout the unit where the, um, elderly dementia  
7 residents could actually engage in some kind of an activity  
8 maybe even on their own?

9 A Yes.

10 Q Maybe like a bucket of sand with some, um, shells or  
11 something in there to stimulate them, to have some sort of  
12 stimulation?

13 A Yes.

14 Q They did find on this that there was some evidence  
15 that activities were being offered; is that true?

16 A Yes.

17 Q But for the total score out of 20, they got 5 out of  
18 20; true?

19 A Yes.

20 Q Did they flunk that section?

21 A Yes.

22 Q Okay. Then under the wellness, that's kind of more  
23 the nursing side of the Memory Care Unit; true?

24 A Yes.

25 Q Okay. And so were the residents being weighed, um --  
26 weights being monitored monthly per their policy?

27 A They were partially in compliance.

28 Q And the description or comment was that they were in

1 the process of purchasing equipment?

2 A Yes.

3 Q So that would be a scale to weigh the residents?

4 A Yes.

5 Q Okay. And then the next item was whether the family  
6 and physician were being notified of weight changes; is that  
7 true?

8 A Yes.

9 Q And the, um, auditor found no documentation was noted  
10 on weight gain or loss?

11 A Yes, and non-compliant.

12 Q They were non-compliant. Okay.

13 And then skin checks were being completed weekly on  
14 each resident per policy, were they compliant on that?

15 A They were partially in compliance.

16 Q Okay. And skin sheets, um, that's something that  
17 Emeritus, um, had in place where the care giving staff  
18 should be looking at the resident's skin and filling out a  
19 document if they saw any changes or skin breakdown?

20 A Yes.

21 Q And Emeritus' policy was to shred those skin sheets  
22 rather than put them in the resident's record; true?

23 A Yes.

24 Q And resident life story completed for each resident  
25 within 72 hours of move-in, was that -- did they -- did  
26 they -- were they in full compliance on that or partial?

27 A Partial.

28 Q Okay. And then the next section -- let's just move it

1 along. How did they do overall in the dining experience,  
2 did they get a flunking grade on that?

3 A Um, when it came to the diet board and, um, having  
4 that put together with pictures for the residents, they were  
5 non-compliant.

6 Q And this contrasting linens and china, that wasn't in  
7 place either; true?

8 A True.

9 Q That was, to your understanding, something that  
10 Emeritus touted as a way of stimulating residents to eat  
11 with dementia, by giving them colorful plates to kind of  
12 stimulate their appetite like you do with kids?

13 A Yes.

14 Q And they weren't monitoring whether the meal  
15 attendance for the residents was being checked for every  
16 meal, true?

17 A True.

18 Q And then we get to the section about family  
19 partnership, and that is at the bottom of the page and the  
20 top of the next page -- we will stick there.

21 Can you just tell us, that is a six-item section;  
22 true?

23 A Yes.

24 Q And isn't that a big part of Emeritus' marketing, that  
25 they get into a partnership with the family and we are there  
26 for you and we provide support for you and we are a team  
27 together?

28 A Yes.



1 Q And how did Emeritus do at the Emerald Hills Memory  
2 Care Unit for the family partnership?

3 A They were non-compliant.

4 Q Then for home-like environment I have, um -- go on  
5 down to the next section, Erik, if you would, please.

6 For home-like environment that is clean and free of  
7 unpleasant odors, she found food on the carpet, unpleasant  
8 odor upon arrival --

9 A Yes.

10 Q -- true?

11 There was no documentations on the door alarms to make  
12 sure the residents did not wander away from the facility?

13 A They were non-compliant in that.

14 Q And whether the staff responded appropriately in a  
15 timely manner to door and gate alarms, how did they do on  
16 that?

17 A They were non-compliant.

18 Q And how many minutes did it take for the staff to  
19 respond to the delayed egress alarm when the auditor tried  
20 to -- when the auditor set that off?

21 A It took about four minutes.

22 Q And that was when the facility knew you were coming?

23 A Yes.

24 Q So the total score was 46 for the Memory Care Unit;  
25 true?

26 A Yes.

27 Q And there were 31 total categories, correct?

28 A Yes, there was.

1 Q So out of 31 times -- 155 total points -- Emeritus got  
2 46 out of 155?

3 A Yes.

4 Q I will ask you now to turn to Exhibit 274.

5 **(Joint Exhibit 274 was marked for identification.)**

6 Q (By MS. CLEMENT) Was this part of the resident  
7 request protocol for Emeritus?

8 A Yes.

9 Q And was it your understanding that whenever a family,  
10 attorney or any representative of a resident requested their  
11 records, that the whole file had to be sent to the Seattle  
12 legal department?

13 A Yes.

14 MS. CLEMENT: At this time Plaintiffs would seek to  
15 move into evidence Exhibit 274.

16 MR. REID: No objection, your Honor.

17 THE COURT: 274 is admitted.

18 **(Joint Exhibit 274 was admitted into evidence.)**

19 Q (By MS. CLEMENT) Um, I went out of order. Can you  
20 look at Exhibit Number 273?

21 **(Joint Exhibit 273 was marked for identification.)**

22 Q (By MS. CLEMENT) Is this an e-mail that you received  
23 from an Emeritus employee, Genevieve Bautista (phonetic) --

24 A Yes.

25 Q -- dated May 4th, 2008?

26 A I'm sorry. Yes.

27 Q And this was to you and copied on Doris Marshall  
28 regarding a visit?

1 A Yes.

2 Q Okay. And can you tell us what, um, the purpose of  
3 this visit was, to your understanding?

4 A This was part of, um, training that they, um --  
5 Genevieve went over with me for certain documentations that  
6 they use in quality services.

7 Q And who is Genevieve Bautista?

8 A She was another RDQS. I think she was in region 3  
9 so...

10 Q And was Ms. Bautista's visit in May of 2004 a part of  
11 a training that you would be attending?

12 A Yes.

13 Q Okay. And you and Don Zimmerman were going to go pick  
14 Ms. Bautista up at the airport?

15 A Yes.

16 MS. CLEMENT: And, um, at this time, your Honor,  
17 Plaintiffs would seek to move into evidence Exhibit Number  
18 273.

19 MR. REID: No objection, your Honor.

20 THE COURT: All right. 273 is admitted.

21 **(Joint Exhibit 273 was admitted into evidence.)**

22 Q (By MS. CLEMENT) And the initiatives that she  
23 described in her e-mail to you at the lower part of the  
24 first page, she gave a list of items that they wanted to go  
25 over; is that true?

26 A Yes.

27 Q And what was the number one thing on the list?

28 A Sales.

1 Q Number two?

2 A Occupancy.

3 Q Number three?

4 A Back door, "closing the back door".

5 Q Four?

6 A Staffing.

7 Q Five?

8 A I think it's overtime. It would be overtime.

9 Q And then number six, what came up for number six?

10 A Care.

11 Q Seven?

12 A Human resources issues.

13 Q Eight?

14 A Any barriers.

15 Q And was that part of the "no barriers to sales

16 campaign"?

17 A Yes.

18 Q What was your understanding of what that "no barriers

19 to sales campaign" was about?

20 A Basically if, um, residents were to move in and there

21 were -- there seemed to be a concern with them moving in,

22 what advice could we give to help decrease those barriers

23 for them not to moving in.

24 Q For example, if a resident was insulin dependent?

25 A Yes.

26 Q Or if a resident had a very high level of care needs?

27 A Yes.

28 Q Or if a resident, um, couldn't afford the Memory Care

1 Unit but they had dementia, how could we get them still into  
2 the building?

3 A Yes.

4 Q For example, putting them on the assisted living side?

5 A Yes.

6 Q Was that a common practice in your employment there?

7 A Yes.

8 Q Are you familiar with, um, Emeritus' initiatives that  
9 they came up with to "close the back door"?

10 A Yes.

11 Q How about the initiative that they came up with to do  
12 a training to prevent -- for families, bring them into the  
13 community and do a training for the families to deter them  
14 from moving the residents out?

15 A Yes.

16 Q Do you remember that one?

17 A Yes, I do.

18 Q And do you remember that was Jayne Sallerson's idea?

19 A I -- I -- I think so, yes. It sounds familiar to me.

20 Q What about a barrier to sales being a resident who  
21 didn't have a current 602 or physician's report, did you  
22 learn about that in the course of your employment?

23 A Yes.

24 Q And did you learn that Budgie Amparo was directing the  
25 team in California that it was okay on a case-by-case basis  
26 to move residents into the facility without a current  
27 physician's report?

28 A Yes.

1           MR. REID: As phrased, it's vague and calls for  
2           hearsay.

3           THE COURT: Sustained.

4           MR. REID: Move to strike the answer, your Honor.

5           THE COURT: Granted.

6           Q        (By MS. CLEMENT) Did you -- did you participate on  
7           conference calls with Budgie Amparo?

8           A        Yes.

9           Q        How frequently were -- did you -- did you have to, as  
10          part of your job, be on conference calls?

11          A        Um, 75, 80 percent of our time we were on conference  
12          calls, yeah.

13          Q        Okay. And did you ever hear Mr. Budgie Amparo say on  
14          a conference call, I don't care about those 602s, we need  
15          heads in the beds?

16          A        Yes.

17          Q        Did you hear complaints about under-staffing in the  
18          course of your employment at Emeritus?

19          A        Yes.

20          Q        Did you hear that at every level in the facilities  
21          that you worked in?

22          A        Yes.

23          Q        Did you report those complaints to Lisa Hulse, Budgie  
24          Amparo, the members of the collaborative team?

25          A        Yes.

26          Q        Was the response of Emeritus Corporate to tell you to  
27          try to get the facilities to just figure it out on their  
28          own?

1 A Yes.

2 Q Did the response from corporate include have the  
3 caregivers try multi-tasking?

4 A Yes.

5 Q Have those facilities try to do more with less?

6 A Yes.

7 Q Were you told that there was no more money for staff  
8 in the Emeritus facilities?

9 A Yes.

10 Q Was it true that in your -- the course of your  
11 employment that Emeritus went months at a time in the  
12 facilities that you oversaw without a nurse?

13 A Yes.

14 Q And they went months at a time without an executive  
15 director?

16 A Yes.

17 Q And at some points in time they had neither an  
18 executive director or a nurse?

19 A Yes.

20 Q For example, at Citrus Heights in Roseville, during  
21 the year 2008 when Mrs. Boice was a resident in that fall  
22 and winter of 2008, was it true that Ms. Peggy Stevenson,  
23 the resident care director, had to spend two days a week at  
24 the Citrus Heights facility because they had no executive  
25 director and no nurse in that facility?

26 A Yes.

27 Q And that facility was all dementia residents; true?

28 A Yes.

1 Q So -- okay. Did the people that you worked with at  
2 Emeritus, executive directors, um, resident care directors,  
3 did they tell you that they felt intense pressure to fill  
4 the buildings?

5 A Yes.

6 Q Did they tell you that they felt intense pressure to  
7 keep high acuity residents in the facility?

8 A Yes.

9 Q Did Lisa Hulse repeatedly, over the course of your  
10 employment, tell you to work within the gray areas of Title  
11 22 regulations?

12 A Yes.

13 Q Was the focus of the calls that you were on increasing  
14 occupancy?

15 A Yes.

16 Q Was the focus the urgency of sales?

17 A Yes.

18 Q Did the focus also include preventing residents that  
19 were existing in the facilities from moving out?

20 A Yes.

21 Q Did anyone from Emeritus ever suggest, to your  
22 understanding, that Emeritus just stop admitting new  
23 residents until they could get these problems with staffing  
24 sorted out?

25 A I'm sorry, could you repeat that?

26 Q Yes. Did anyone from Emeritus ever say to you that  
27 Emeritus should stop admitting new residents until they  
28 could get the problems with staffing sorted out?



1 A No, no.

2 Q If there was a potential move-out were the executive  
3 directors, resident care directors or wellness coordinator  
4 in the facilities that you oversaw, were they told that they  
5 had to report that potential move-out to you or Lisa Hulse?

6 A Yes.

7 Q And that it was part of your responsibility to try to  
8 come up with some way to keep that resident in the facility?

9 A Yes.

10 Q Is it true that when you arrived at Emeritus and  
11 started going to the facilities that you were overseeing  
12 that you found that the facilities had very high acuity or  
13 high care need residents?

14 A Yes.

15 Q Was the typical resident in Emeritus facilities that  
16 you saw in region one someone who could walk around on their  
17 own, go to the bank, take their meds without any problem on  
18 their own without any help?

19 A Not the typical one, no.

20 Q Did you feel like your job at Emeritus was a stressful  
21 job?

22 A Yes.

23 Q Did you feel like you would come up against a brick  
24 wall with Emeritus when you tried to implement changes that  
25 would include increasing staffing?

26 A Yes.

27 Q Was it your, um, experience while you worked at  
28 Emeritus that there was an actual budgeted number of

1 move-outs that a facility could have per month?

2 A Oh, yes.

3 Q And what was that budgeted number of move-outs per  
4 month?

5 A It went from 3.0 to 3.5, I think it was, per month.

6 Q And was it your understanding that the facility was  
7 expected to exceed in move-ins of new residents the number  
8 of move-outs that they had each month?

9 A Yes.

10 Q Was it your experience that Emeritus demanded that  
11 you, as a resident, um -- excuse me -- as a regional  
12 director of quality services keep a tight reign on labor  
13 costs in the facilities?

14 MR. REID: Vague as to who is making the directive,  
15 your Honor.

16 THE COURT: You can follow-up on that.

17 MS. CLEMENT: I can -- I will re-ask the question.

18 Q (By MS. CLEMENT) Was it your experience at Emeritus  
19 that you were told that you had to keep a tight reign on  
20 labor costs in the facilities?

21 A Yes.

22 Q And was the highest part of the labor expense the  
23 direct care staff?

24 A Yes.

25 Q And were you being told to cut labor costs?

26 A Yes.

27 Q And at the same time were you being told that Emeritus  
28 was, um, moving in higher care need residents?

- 1 A Yes.
- 2 Q And retaining higher care need residents?
- 3 A Yes.
- 4 Q And as a nurse of over 24 years does a Hospice  
5 resident, um, in an Emeritus facility, do those residents  
6 have Hospice workers in there 24/7 caring for them?
- 7 A No, they don't.
- 8 Q In fact, isn't it true that Hospice maybe comes in  
9 once a day for maybe an hour?
- 10 A Yes.
- 11 Q Is the same thing true when Emeritus brings in a home  
12 healthcare agency to provide some additional care for a  
13 resident, that they are typically in the building for about  
14 an hour at a time?
- 15 A Yes.
- 16 Q And they don't always come every single day?
- 17 A No, they don't.
- 18 Q So you understood that when Emeritus accepted or kept  
19 a Hospice resident or a resident who had very high care  
20 needs that they were responsible for delivering the care to  
21 that resident 24/7?
- 22 A Yes.
- 23 Q Were you told why Emeritus wanted to increase the  
24 level of care of the residents they were accepting?
- 25 A A lot of the residents were coming from skilled  
26 nursing facilities versus walking in.
- 27 Q Was it your --
- 28 MR. REID: I'm going to object, your Honor, that

1 answer was non-responsive.

2 THE COURT: Sustained.

3 MR. REID: And I move to strike the answer, please,  
4 your Honor.

5 THE COURT: Granted.

6 MS. CLEMENT: I will lay a better foundation, your  
7 Honor.

8 Q (By MS. CLEMENT) Um, Emeritus, do they recruit  
9 residents from skilled nursing facilities?

10 A Yes.

11 Q And did Emeritus tell you that the reason they wanted  
12 to increase the level of care of the residents that they  
13 were accepting and retaining is because they could charge  
14 more for higher level of care?

15 A Yes.

16 Q And the dementia care residents, was it your  
17 understanding that you learned through the course of your  
18 employment that Emeritus made more money on the Memory Care  
19 Unit record -- residents?

20 MR. REID: Lack of foundation, your Honor.

21 THE COURT: Sustained.

22 Q (By MS. CLEMENT) Was it your --

23 MR. REID: And if she answered, I would move to strike  
24 the answer.

25 THE COURT: I don't think she did answer.

26 MR. REID: Okay. Thank you.

27 Q (By MS. CLEMENT) Were you -- did you -- as part of  
28 your job did you have to go over the budgets at the

1 facilities with the executive directors, if they had one?

2 A No, I didn't -- no.

3 Q Did you sometimes have to sit in facilities and act as  
4 the director, the resident care director?

5 A Yes.

6 Q And how long did you have to do that at times in  
7 different facilities?

8 A I know in the Lodi community it was months, um, and  
9 Citrus Heights, it was maybe a couple of months.

10 Q And that's because they didn't have a nurse?

11 A Yes.

12 Q At times did they have neither a nurse nor an  
13 executive director?

14 A Yes.

15 Q And did you know -- were you -- were you told during  
16 the course of your employment how much, um -- how profitable  
17 the Memory Care Unit residents were?

18 A Yes.

19 Q And were you told that the monthly rate was much  
20 higher for the memory care residents?

21 A Yes.

22 Q And so was it your understanding based upon your  
23 communications with -- on these phone calls that you would  
24 have, these conference calls, that Emeritus was making a  
25 push to get more dementia residents in their facilities  
26 because they made more money on them?

27 A Yes.

28 THE COURT: All right. Ms. Clement, I think it's time

1 for us to stop today.

2 MS. CLEMENT: Okay.

3 THE COURT: Ladies and gentlemen, please leave your  
4 notebooks on the chairs. Remember the admonitions. I will  
5 see you at 9:00 a.m. tomorrow morning.

6 **(The following proceedings were held outside the presence of**  
7 **the jury:)**

8 THE COURT: We will see you back tomorrow morning at  
9 nine o'clock as well.

10 THE WITNESS: Thank you.

11 THE COURT: All right. Thank you.

12 MS. CLEMENT: Thank you. Sorry you had to wait so  
13 long.

14 THE COURT: Is there anything we need to talk about?

15 MR. REID: No, your Honor.

16 MS. CLEMENT: Can I just ask you a request, Judge? I  
17 wrote a note this morning, but I'm not 100 percent sure.  
18 Wednesday at four o'clock we are going to hear arguments  
19 about, um --

20 THE COURT: The NPR request.

21 MS. CLEMENT: Yes. Is that right?

22 THE COURT: Yes.

23 MS. CLEMENT: Okay.

24 MR. REID: PBS.

25 THE COURT: Well, PBS -- PBS request.

26 MS. CLEMENT: And, um, has Defense Counsel notified  
27 the attorney for PBS?

28 THE COURT: We did.

1 MS. CLEMENT: Okay. All right. So we are going to be  
2 done -- what time are we going to end on Wednesday?

3 THE COURT: Four o'clock.

4 MS. CLEMENT: So we can have testimony right up to  
5 then. I'm just trying to --

6 THE COURT: Testimony until four o'clock.

7 MS. CLEMENT: Okay.

8 THE COURT: And, um, I -- did you file your papers  
9 today, Mr. Reid, by noon?

10 MR. REID: Yes.

11 MS. BADAWIYA: We did.

12 THE COURT: Did you serve it on Ms. Clement?

13 MR. REID: It has been served. The, um --

14 THE CLERK: I need the original. I don't have --

15 MR. REID: We will bring the original. I think it was  
16 e-mailed over.

17 THE CLERK: Okay.

18 THE COURT: You need to serve Ms. Clement at the same  
19 time that you provide the Court with a copy.

20 MR. REID: We submitted a e-mail copy of the brief to,  
21 um, Ms. Clement's office, and I will make sure that --

22 THE COURT: Okay. Did you also submit an e-mail copy  
23 of the brief to Mr. Burns, who was the attorney for --

24 MR. REID: Yes, your Honor.

25 MS. BADAWIYA: Yes, we did.

26 THE COURT: Okay. And I think we are still on track,  
27 Ms. Clement, unless I hear otherwise from you, to hear by  
28 Friday, I think was when I gave you, to respond to their

1 brief on the, um, minimum, maximum -- the ceiling, the --

2 MS. CLEMENT: You know, I just saw Valerie who is  
3 going to be working on that. We just got theirs, I think,  
4 over the weekend.

5 THE COURT: Late Friday I think.

6 MS. CLEMENT: Yeah, right. I don't think -- I don't  
7 think she got it though. I -- I don't know.

8 Anyway, um, there is some legislative history that we  
9 need to get. The Defense submitted maybe a few pages of  
10 that and it's apparently 277 pages. So Valerie asked me if  
11 I could ask the Court if we could have a little more time on  
12 that.

13 THE COURT: Yes.

14 MS. CLEMENT: Okay. Can I give you an update a little  
15 bit later in the week as to how much time she needs?

16 THE COURT: Yes.

17 MS. CLEMENT: Thank you, Judge.

18 THE COURT: Okay. Anything else?

19 MR. REID: No, your Honor.

20 THE COURT: Then we are in recess. Thank you.

21 (Evening recess.)

22 (Case continued to 1/15/13.)

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1 TUESDAY, JANUARY 15, 2013

2 MORNING SESSION

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4 The matter of JOAN BOICE, by and through her  
5 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE  
6 BOICE, and MARK BOICE, individually, Plaintiffs, versus  
7 EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS,  
8 Defendant, Case Number 34-2009-00063714, came on regularly  
9 this day before Honorable JUDY HOLZER HERSHER, Judge of the  
10 Superior Court of California, for the County of Sacramento,  
11 Department 45.

12 The Plaintiffs, JOAN BOICE, by and through her  
13 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE  
14 BOICE and MARK BOICE, were represented by LESLIE A. CLEMENT,  
15 Attorney at Law; VALERIE DAWSON, Attorney at Law; ASHLEY  
16 BAIRD, Attorney at Law; and SEAN LAIRD, Attorney at Law.  
17 The Plaintiffs, ERIC BOICE, NANCEE BOICE and MARK BOICE were  
18 present.

19 The Defendant, EMERITUS CORPORATION dba EMERITUS AT  
20 EMERALD HILLS, was represented by BRYAN R. REID, Attorney at  
21 Law; RIMA BADAWIYA, Attorney at Law; and KIM M. WELLS,  
22 Attorney at Law.

23 Also present on behalf of the Defendant, EMERITUS  
24 CORPORATION dba EMERITUS AT EMERALD HILLS, was JANET E.  
25 McKINNON, Vice President of Legal Affairs; and LISA HULSE,  
26 Vice President Quality & Risk Management.

27 **(The following proceedings were then had in open court, in**  
28 **the presence of the jury.)**

1 COURT ATTENDANT: All rise. Department 45 is now in  
2 session. The honorable Judge Judy Hersher now presiding.  
3 You may be seated.

4 THE COURT: All right. Good morning, everyone.  
5 Ms. Clement.

6 MS. CLEMENT: Thank you, your Honor.

7 CONTINUED TESTIMONY OF  
8 DORIS MARSHALL, Witness called under Evidence Code 776 on  
9 behalf of the Plaintiffs,

10 RESUMED CROSS-EXAMINATION

11 By LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
12 the Plaintiffs:

13 Q Ms. Marshall, looking again at Exhibit Number 264,  
14 this planning and tracking dashboard, was this -- were these  
15 the facilities that you -- or communities, as Emeritus calls  
16 them, that you had when you first started with Emeritus?

17 A Yes.

18 Q And over time did they add communities to your, um,  
19 region?

20 A Yes.

21 Q It looks like ten facilities when you first started  
22 and then did they added an eleventh facility?

23 A Yes.

24 Q Where was that?

25 A In Vacaville.

26 Q And then, um, toward the end of your tenure did they  
27 add even more facilities to your, um, region?

28 A Yes.

1 Q And where were those?

2 A One was in Yreka, and another one was, I want to say,  
3 near -- the Hazel Creek community. It's in Sacramento.

4 Q Now, this level of care targeting -- this was a target  
5 or, um, a budget that they put out for you, what they were  
6 asking you to hit in these facilities; true?

7 A Yes.

8 Q And was this, um -- do you know off the top of your  
9 head if they ever hit these numbers?

10 A I can't remember if we did.

11 Q Okay. And this level of care, was this, um, a twofold  
12 situation where they wanted to increase the level of care of  
13 residents that were coming in as new residents and the  
14 second fold was that they wanted to, um, retain higher level  
15 of care residents in the facilities?

16 A Yes.

17 Q And as part of that retaining higher level of care  
18 residents in the facilities, they wanted to start, um,  
19 reassessing the residents that they had so that they could  
20 charge them more points or levels of care?

21 A Yes.

22 Q Okay. Was Emeritus at the same time during your  
23 tenure, through the end of 2008, while they were increasing  
24 this level of care residents that they were going after and  
25 retaining, were they at the same time increasing the staff  
26 to meet that level of care?

27 MR. REID: Lacks foundation, your Honor.

28 THE COURT: Sustained.

1 Q (By MS. CLEMENT) Were you -- were you -- as part of  
2 the regional director of, um, quality services, were you  
3 involved in knowing, based upon your conference calls and  
4 your meetings in the facilities, with what the level of  
5 staffing was in the buildings that you were overseeing?

6 A Yes.

7 Q And at the time that this level of care was increasing  
8 in 2008, were they also increasing the level of staffing,  
9 caregiving staff?

10 A No.

11 Q Um, we have had some questions in this case about  
12 staffing ratios. Did Emeritus use staff ratios?

13 A No.

14 Q Did you ever hear Budgie Amparo state that Emeritus  
15 doesn't use staff ratios, um, for a particular reason?

16 A Yes.

17 Q What -- what did he say was the reason why that  
18 Emeritus doesn't use staff ratios?

19 A Emeritus is a social model, it's not a healthcare  
20 related model like, um -- ratios would be used in hospital  
21 scales.

22 Q Did Emeritus staff to the acuity of the residents that  
23 they had in their buildings?

24 A No.

25 Q Did you hear complaints from the administrative, um,  
26 staff in the facilities that you oversaw, the executive  
27 directors and nurses, that they had concerns that there  
28 wasn't enough staff to meet the needs of the residents?

1 A Yes.

2 Q Did they have concerns that they didn't know how to  
3 staff the facilities within their budget?

4 A Yes.

5 Q Did you have any control yourself, as the regional  
6 nurse, did you have the ability to increase the budget for  
7 any of the facilities you oversaw to add more nurses or more  
8 med techs or more caregivers into their budget?

9 A No.

10 Q To your understanding did the executive director or  
11 the nurse in the facility have that kind of control?

12 A No.

13 Q Where, to your understanding, did the staffing budget  
14 come from?

15 A Operations.

16 Q And was that in corporate -- from corporate  
17 headquarters?

18 A Oh, yes, yes.

19 Q So throughout your tenure was there a continual push  
20 from Emeritus Corporate that reached you that they had to  
21 increase occupancy in their buildings?

22 A Yes.

23 Q And was there -- excuse me. I will strike that, your  
24 Honor.

25 And was that always achieved, this full occupancy in  
26 the buildings?

27 A No.

28 Q So when full occupancy wasn't achieved in the

1 buildings, did the focus move to keeping residents in the  
2 building, "closing the back door"?

3 A Yes.

4 Q And when the occupancy didn't hit the numbers that  
5 Emeritus expected, was the staffing budget cut further in  
6 the facilities that you oversaw?

7 A Yes.

8 MS. CLEMENT: Your Honor, at this time we would like  
9 to role a clip that we did on the story board and showed in  
10 opening on the staffing.

11 THE COURT: Does Mr. Reid know which one we are  
12 talking about?

13 MS. CLEMENT: I hope so.

14 MR. REID: If I could just get a page and line of the  
15 depo.

16 MS. CLEMENT: 60, 23 to 61, line 1.

17 MR. REID: No objection.

18 THE COURT: Go ahead.

19 **(The following video excerpt was then played in open court:)**

20 Q Did you have complaints from the nurses that worked  
21 under you at Emeritus that the facilities were understaffed?

22 A Yes.

23 **(Video stopped.)**

24 Q (By MS. CLEMENT) And at that deposition,  
25 Ms. Marshall, were you represented by counsel?

26 A Yes.

27 Q And was that counsel from Emeritus?

28 A Yes.

1 Q And then at some later time this last year did you get  
2 a notice of a request that we were asking for a copy of your  
3 personnel file?

4 A Yes.

5 Q And when you got that request, what did you do?

6 A I think I called, um, Tim Wells about defining what  
7 this meant to me.

8 Q And what were you told?

9 A That I didn't necessarily need to hand in my employee  
10 files when I had the option, but I didn't need to hand it  
11 in.

12 Q Were you told to fill out the, um, employee -- the  
13 notice to consumer and object to the production of your  
14 personnel file?

15 A Yes.

16 Q Now, in -- for you to come here today were you served  
17 with a subpoena from my office?

18 A Yes.

19 Q And were you initially served with a subpoena for the  
20 first trial date back in October?

21 A Yes.

22 Q And in response to that, did you contact me?

23 A I think I contacted Ms. Wells.

24 Q Oh, okay. And what did you say in that contact?

25 A I wasn't quite sure about the subpoena, so she  
26 clarified it for me.

27 Q And, um, did you have any concerns about testifying?

28 A Yes.

1 Q And what did you relate about your concerns about  
2 having a meeting?

3 MR. REID: It's vague, your Honor.

4 THE COURT: Sustained.

5 Q (By MS. CLEMENT) Did you agree to meet with me?

6 A Yes.

7 Q Was there a condition put on that meeting?

8 A Yes, there was.

9 Q And what was that condition?

10 A To meet with, um, my sister, who is an attorney.

11 Q And did you also offer that up to Ms. Wells --

12 A Yes, I did.

13 Q -- from the defense team?

14 And did they ever get back to you about that?

15 A No.

16 Q And did we meet together with your sister, the  
17 attorney?

18 A Yes, we did.

19 Q Okay. Back to the video clip that we just saw about  
20 people telling you that they had concerns about  
21 understaffing, was this a rare thing that staff would say to  
22 you in the facilities, either executive directors or med  
23 techs or caregivers or the nurse or anyone working in these  
24 buildings that you oversaw?

25 MR. REID: That is compound.

26 MS. CLEMENT: Was it -- I will rephrase.

27 THE COURT: It is.

28 Q (By MS. CLEMENT) Was it rare for you to hear



1 complaints about understaffing in the buildings that you  
2 oversaw?

3 A No, it wasn't rare.

4 Q Were the employees in the facilities that you oversaw  
5 asking for more help?

6 A Yes.

7 Q Were they asking for more staff?

8 A Yes.

9 Q Were the people who were responsible for doing the  
10 staffing in the facilities asking you how they were supposed  
11 to staff without a ratio?

12 A Yes.

13 MS. CLEMENT: Your Honor, we would like to run the  
14 tape, 61, 2 to 61, 4.

15 MR. REID: No objection, your Honor.

16 THE COURT: Okay. Thank you.

17 **(The following video excerpt was then played in open court:)**

18 Q Did you have complaints that the staff in the  
19 facilities were not properly trained?

20 A Yes.

21 Q Did you --

22 **(Video stopped.)**

23 MS. CLEMENT: That is it. Thank you.

24 Q (By MS. CLEMENT) Can you tell us about concerns that  
25 the staff raised to you about their training?

26 A They knew training was available and they wanted it.

27 Q Did they have the time to actually engage in the  
28 training that was available?

1 A Depending. We had to arrange it so that they could  
2 get the training.

3 Q Did you have concerns in the buildings that you  
4 oversaw that some of the staff didn't have the training that  
5 they needed to care for the residents that were there?

6 A Yes.

7 Q Did you share those concerns with your colleagues at  
8 Emeritus?

9 A Yes, I did.

10 Q And in what format did you share those concerns; was  
11 it on conference calls, in person, how did you do that?

12 A We had several different ways. We did conference  
13 calls, we did, um, site visits, you know, e-mails.

14 Q Now, we have heard a lot about this Ethics First  
15 Hotline that Emeritus had. Were you familiar with that?

16 A Yes.

17 Q Were you ever asked to get involved with, um,  
18 employees who had made complaints on the Ethics First  
19 Hotline?

20 A Yes.

21 Q And what were you asked to do when employees made  
22 complaints on the Ethics First Hotline?

23 A We had to follow-up -- usually they leave their  
24 contact number -- to see what we can do to, um, find out  
25 what their concerns were.

26 Q How about, um, Ethics First Hotline calls when family  
27 members had complaints, were those a priority?

28 A Yes.

1 Q And what were you supposed to do when family members  
2 had complaints from the ethics hotline?

3 A We would have to follow-up and talk to the family  
4 members and, um, see what we can, um, do to alleviate their  
5 fears or find out what their concerns were.

6 Q Did you, um, over time see a pattern where employees  
7 who complained through the ethics hotline then were no  
8 longer at Emeritus?

9 A Yes.

10 Q Did Emeritus employees that you worked with share with  
11 you that they were afraid of Lisa Hulse?

12 A Yes.

13 Q Now, did you have meetings with the state Department  
14 of Social Services over the course of your employment at  
15 Emeritus?

16 A Yes.

17 Q And what was the purpose of those meetings?

18 MR. REID: It's overbroad, your Honor.

19 THE COURT: She can answer.

20 THE WITNESS: Basically it dealt with, um, the  
21 concerns within the community, increasing unusual incident  
22 reports, complaints from family members, um, the way, um,  
23 they viewed how, um, the complainant's concerns within  
24 Region One.

25 Q (By MS. CLEMENT) And would you be asked by Emeritus  
26 to meet with a licensed program analyst and try to smooth  
27 things over?

28 A Yes.

1 Q And were you ever in the building when they were doing  
2 an investigation with an LPA, or a survey?

3 A Oh, yes.

4 Q And when you were present during surveys and complaint  
5 investigations, did you find that the licensed program  
6 analyst, or LPA, did an in-depth review of what the staffing  
7 was in the building?

8 MR. REID: It lacks foundation and is overbroad.

9 THE WITNESS: No.

10 THE COURT: Overruled.

11 THE WITNESS: No.

12 Q (By MS. CLEMENT) So it's been suggested to us in this  
13 trial that the, um -- when the State would come in to do  
14 their five-year annual, um, they would, um, look at staffing  
15 and do a staffing analysis. Did you ever experience that?

16 A No. They don't -- they didn't do that.

17 Q Did they ever ask you in response to a complaint or in  
18 a survey when you were present there with the licensed  
19 program analyst to get like time detail reports that show  
20 the payroll records and the staff schedules to see who was  
21 working on which shifts?

22 A Um, at one point they did ask for the staffing, um,  
23 ratio but not -- I'm sorry, budgeting or --

24 Q No. My question was, they have these things called  
25 time detail reports where the employees clock in and out and  
26 it prints out a computer printout of exactly who was working  
27 in the building. Did they ever ask for that?

28 A They did, yes.

1 Q Okay. And what building was that?

2 A Well, um, I want to say Citrus Heights, Emerald Hills.

3 Um, I want to say Hazel Creek.

4 Q Okay. Was that something that you were able to pull  
5 up and give to them at that meeting?

6 A Yes. Executive directors did.

7 Q And did they then do a sit down with you and do an  
8 analysis to see how many staff were on duty on a particular  
9 shift?

10 A They -- yes.

11 Q And did they compare that to the acuity of the  
12 residents that were in the building?

13 A Yes.

14 Q And how did they do that? Explain for us how they did  
15 that.

16 At one community we will sit down, um, and discuss --  
17 and most of it was with memory care -- the staffing, um,  
18 versus the unusual incident reports they got, um, in lieu of  
19 what that unusual incident report said and how many times  
20 when that one resident -- and factors.

21 Q Okay. So was this with regard to a complaint that had  
22 happened back in time?

23 A Yes.

24 Q So it wasn't that they came in and they did an  
25 analysis of what was happening currently in the building?

26 MR. REID: It's vague, your Honor.

27 THE COURT: Sustained.

28 Q (By MS. CLEMENT) Were you ever with the licensed

1 program analyst where they came in and did a staffing  
2 analysis based upon what was currently happening in the  
3 building?

4 MR. REID: It's vague, your Honor.

5 THE COURT: Sustained.

6 Q (By MS. CLEMENT) Did you ever work with a licensed  
7 program analyst in a Emeritus facility where they requested  
8 staffing documents, like staff time detail reports and  
9 schedules for the facility, at the exact time that they were  
10 in the building? In other words, they were asking for that  
11 snap shot in time while they were there?

12 MR. REID: I think it's asked and answered, your  
13 Honor. Otherwise, it's vague.

14 THE COURT: Well, it's compound. We have already  
15 heard some testimony about what they asked for and provided.  
16 So rephrase, please.

17 MS. CLEMENT: Okay.

18 Q (By MS. CLEMENT) Isn't it true, Ms. Marshall, that  
19 the Department of Social Services never asked to do a  
20 current staffing analysis based upon what was happening at  
21 that time in the building; instead, they were looking back  
22 at a single particular complaint?

23 MR. REID: It's vague and asked and answered.

24 THE COURT: Sustained.

25 Q (By MS. CLEMENT) Other than looking at a particular  
26 complaint that the Department of Social Services was  
27 reviewing on a particular resident regarding a unusual  
28 incident report, was there any other time that you saw the

1 State do any type of a staffing analysis?

2 A No, no.

3 Q When you came on board with Emeritus were you given  
4 any kind of equipment?

5 A Yes.

6 Q What were you given?

7 A A computer and a cell phone.

8 Q And, um, was it a laptop computer?

9 A A laptop, yes.

10 Q And on the cell phone did they have any applications  
11 that they had pre-installed on the phone?

12 A Yes.

13 Q And did they have any applications that were  
14 particular to Emeritus?

15 A Yes.

16 Q And what -- what applications were on the phone that  
17 were particular to Emeritus?

18 A I think it's a stock exchange app.

19 Q And did that stock exchange app show you at all times  
20 what Emeritus stock trading price was doing?

21 A Yes.

22 Q And as part of your, um, bonuses, incentives did they  
23 give you stock options and stocks?

24 A Yes.

25 Q Now, at the time that Mrs. Boice was a resident was it  
26 your understanding that the, um, Title 22 definition of  
27 bedridden meant that a resident who could not get in or out  
28 of bed without assistance?

1 A Yes.

2 Q And in the buildings that you were overseeing for  
3 Emeritus, did they have bedridden residents?

4 A Yes.

5 Q I want to talk about this working in the gray areas of  
6 the regulations and Title 22. Did you participate in, um,  
7 conference calls where you heard Lisa Hulse say that in  
8 order to keep a resident in their facility that they needed  
9 to work in the gray areas of the Title 22 regulation?

10 A Yes.

11 Q Now, these bedridden residents that Emeritus had, that  
12 included residents that were on the assisted living side of  
13 the facilities?

14 A Yes.

15 Q Did that include residents who were not on Hospice?

16 A Yes.

17 Q In fact, did you get e-mails from, um, the executive  
18 directors and nurses, um, in the buildings, did they have to  
19 e-mail you and Lisa about any potential move-outs every week  
20 or month?

21 A Oh, yes.

22 Q And did they have to tell you what the, um, issues  
23 were with regard to residents moving out?

24 A Yes.

25 Q And then they had to get approval from Lisa in order  
26 to move that resident out or come up with a strategy to keep  
27 that resident in?

28 A Yes.



1 Q Now, Emeritus acquired three more buildings during  
2 your tenure; is that true?

3 A For Region One, yes.

4 Q And the first day you got on the job you weren't able  
5 to go to all ten facilities; true?

6 A No.

7 Q And you told us over time that, um, you had to work in  
8 some of the buildings for even months at a time; is that  
9 true?

10 A Yes.

11 Q Did you see examples in the facilities that you worked  
12 in that, um, Emeritus actually started cutting staff care,  
13 staff in the buildings that either they acquired or  
14 buildings that you went into and worked as a -- as a nurse  
15 in the facility?

16 A Yes.

17 Q Can you give us an example of that?

18 MR. REID: That is overbroad, your Honor.

19 THE COURT: We are talking about in the region that  
20 she worked in in northern California?

21 MS. CLEMENT: Yes. Yes, your Honor.

22 THE COURT: She can answer.

23 THE WITNESS: I'm sorry.

24 MS. CLEMENT: That is okay.

25 Q (By MS. CLEMENT) Can you give us -- the jury -- can  
26 you tell the jury any examples of facilities that you were  
27 in that you actually watched Emeritus cut the staffing in  
28 the facility, the caregiving staff?

1 A Yes. Um, the community in Lodi was one, um, a staff  
2 with an enormous amount of nurses, um, for an all-dementia  
3 unit. That was one of the communities that we cut back on.

4 Q And when you came to the facility was that a high --  
5 did the residents in that facility have very high acuity?

6 A Oh, yes.

7 Q And what happened to the nurses that were working in  
8 that facility?

9 A You know, I think, um, we kept a couple, but most of  
10 them moved on.

11 Q And were you instructed that you needed to reduce the  
12 staff in that Lodi building as part of your job while you  
13 were there?

14 A Yes.

15 Q And were you instructed to reduce staff in other  
16 buildings that you were -- that you came into?

17 A Yes.

18 Q How about when employees reached what Emeritus thought  
19 was too high of a salary level or too high of a hourly rate,  
20 what would happen to those employees in Region One in your  
21 experience?

22 A We gave them the option of either -- either, um,  
23 taking another position or moving on.

24 Q When you first started at Emeritus was this your first  
25 experience of any kind in long-term care?

26 A Yes.

27 Q And had you never -- you had never worked in any way  
28 in assisted living?

1 A No.

2 Q And did, um, Lisa Hulse and Audrey Withers in the  
3 first week or so that you were on the job, did they do a  
4 training with you?

5 A I think Lisa did.

6 Q And can you tell the jury what was the training that  
7 Lisa Hulse provided for you in that first week?

8 A I think the first week I was able to -- I think we met  
9 in a hotel and went over, um, things on the computer, some  
10 forms and documents. Yes.

11 Q In your, um, first month or two you were at the -- at  
12 the company did you have any interaction with Audrey  
13 Withers?

14 A Yes. I think -- I want to say I did.

15 Q Okay. Do you, um -- did you ever have any -- strike  
16 that.

17 I'm going to talk about Budgie Amparo and how you met  
18 him, okay?

19 A Okay.

20 Q When you met Budgie Amparo was he working at Emeritus?

21 A He was, yes.

22 Q Was he working somewhere else too?

23 A Yes.

24 Q And where else was he working?

25 A He was a director of nursing at, um, Prime Career  
26 College held here in Sacramento.

27 Q Okay. And that was the position then that you took of  
28 Prime Career College?

1 A Yes.

2 Q So when you met Budgie he was the director of nursing  
3 and then you were hired to be the director of nursing?

4 A Yes.

5 Q And then Budgie asked you to leave Prime Career  
6 College and come to Emeritus?

7 A In general, yes.

8 Q And was it for considerably higher pay to work for  
9 Emeritus?

10 A Oh, yes.

11 Q And at that time was that something that was important  
12 to you, to make more money because you were going through  
13 your divorce?

14 A Yes.

15 Q Can you look at Exhibit Number 269?

16 **(Joint Exhibit 269 was marked for identification.)**

17 Q (By MS. CLEMENT) Is this an e-mail that you initially  
18 received from, um, someone at Emeritus Senior Living in  
19 corporate headquarters in March of 2009?

20 A Yes.

21 Q And then did you communicate with Rich Lee, who became  
22 the administrator at Emerald Hills, with regard to this  
23 e-mail?

24 A Yes.

25 Q And was this -- you were doing some investigation as  
26 to, um -- was this with regard to why the family was  
27 requesting Mrs. Boice's records?

28 A Originally it was regarding signing off on a -- or

1 approval notice actually for a write-off. Um --

2 Q And that was something that if, um -- do you know the  
3 circumstances as to why corporate was wanting to write-off  
4 part of Mrs. Boice's charges that were continuing to be sent  
5 out by Emeritus after she left?

6 A No.

7 Q Then can you turn to Exhibit 270?

8 **(Joint Exhibit 270 was marked for identification.)**

9 Q (By MS. CLEMENT) Is this a letter that was faxed to  
10 you, um, as the quality services, um, regional director  
11 regarding the Rancho Solano, um, Memory Care Unit in Region  
12 One?

13 A Yes.

14 Q And Ms. Rovina Jones, she was a med tech in the Memory  
15 Care Unit?

16 A Yes.

17 Q And did you know her?

18 A Yes.

19 Q And, um, was she complaining to you about the staffing  
20 situation at the facility?

21 A Yes.

22 Q Is this something that you would frequently get from  
23 employees, either notes or e-mails or faxes from them saying  
24 that they had concerns about staffing?

25 A Yes.

26 Q And would you share this information with Lisa Hulse  
27 and other people on your team?

28 A Yes. We would even meet with the -- at the community

1 with them so they -- we shared it.

2 MS. CLEMENT: At this time, your Honor, Plaintiffs  
3 would seek to move into evidence Exhibit Number 270.

4 THE COURT: Any objection?

5 MR. REID: I'm pretty sure that there is some -- if I  
6 recall looking at this, I think there was a resident  
7 identified in the document.

8 THE COURT: There is.

9 MS. CLEMENT: We would be happy to redact that name,  
10 your Honor.

11 THE COURT: All right. Is your intention to show it  
12 at this time?

13 MS. CLEMENT: No. We will redact it first.

14 THE COURT: All right. Assuming that the Plaintiff  
15 removes the individual name, is there any objection?

16 MR. REID: No, your Honor.

17 THE COURT: All right. 270 will be admitted with any  
18 identifying names as to residents removed.

19 **(Joint Exhibit 270 was admitted into evidence.)**

20 Q (By MS. CLEMENT) Ms. Marshall, was it your experience  
21 at Emeritus that employees, executive directors and nurses  
22 at the facilities, could be written up for reporting to the  
23 State unusual incidents, things that affected residents'  
24 safety, before they reported it to corporate?

25 A We would talk to them, yes. We needed to review the  
26 unusual incident reports before they were sent out.

27 MR. REID: That is non-responsive, your Honor.

28 THE COURT: Sustained.

1 MR. REID: Move to strike the answer, please.

2 THE COURT: Granted.

3 Q (By MS. CLEMENT) Would -- were employees at risk --  
4 director employees at risk for being written up for  
5 reporting unusual incidents to the State in writing before  
6 they had the regional team or divisional team review what  
7 they were going to submit to the State?

8 A Yes.

9 Q Now, you knew Nancy Cordova who was the executive  
10 director when Mrs. Boice was a resident?

11 A Yes.

12 Q And, um, you knew who she was replaced with,  
13 Mr. Richard Lee?

14 A Yes.

15 Q And was it Ronda Castleberg who hired Richard Lee to  
16 be the new executive director?

17 A Yes.

18 Q And, um, did you have concerns that you voiced about  
19 Mr. Richard Lee becoming the new executive director?

20 A Yes.

21 MR. REID: Objection, relevance, your Honor, this was  
22 the subject of a motion in limine.

23 MS. CLEMENT: No, it wasn't.

24 THE COURT: Counsel approach, please.

25 (Sidebar conference was held.)

26 MS. CLEMENT: Thank you, your Honor.

27 THE COURT: Objection is overruled.

28 Q (By MS. CLEMENT) Was your concern about Mr. Richard

1 Lee, who replaced Ms. Cordova, that he did not even have a  
2 license to be a administrator at the time that he was put  
3 into that position?

4 A My concern was he -- I felt better if he was in sales  
5 and marketing.

6 Q As you understood from your communication with Mr. Lee  
7 and Ronda Castleberg, part of the collaborative team, the  
8 regional director of operations, was that his background was  
9 as a boat salesman?

10 A Yes.

11 Q And over the course of, um, Mr. Lee's tenure with, um,  
12 Emerald Hills did you have to frequently go into the  
13 facility to assist him?

14 A Yes.

15 Q And, um, was it your understanding that Mr. Lee, um --  
16 that the State had concerns about Mr. Lee?

17 A Yes.

18 Q And was it your understanding that in the end the  
19 State required Mr. Lee to re-take the exam in front of a  
20 licensed program analyst?

21 A Yes.

22 Q And was Mr. Lee let go?

23 A Yes.

24 Q Um, did you have nurses that worked for Emeritus tell  
25 you that they were afraid that they would lose their license  
26 if they continued working for the company?

27 A Yes.

28 Q Was Peggy Stevenson one of those people?



1 A Yes.

2 Q And when, um, Mrs. Boice was a resident and Nancy and  
3 Peggy were the two, um -- the executive director and the  
4 nurse in the facility, did they tell you that they felt  
5 overwhelmed in their job duties?

6 A Yes.

7 Q Is that a common that you were hearing in the  
8 buildings that you were in, that the executive directors,  
9 the nurses just felt overwhelmed by their job  
10 responsibilities?

11 A Yes.

12 Q How about the med techs?

13 A Yes.

14 Q Did -- do you remember med techs telling you that they  
15 didn't even want to do that job anymore?

16 A Yes.

17 Q That they couldn't take the responsibility of it?

18 A Yes.

19 Q And they didn't feel that they had the training to do  
20 that job?

21 A Yes.

22 Q Did you share these concerns back with Lisa Hulse and  
23 Budgie on your -- on these collaborative team management  
24 phone calls you had?

25 A Yes.

26 MS. CLEMENT: Thank you, Ms. Marshall. I have no  
27 further questions at this time, your Honor.

28 THE COURT: Mr. Reid?

1 MR. REID: Thank you, your Honor.

2 MR. REID: Good morning, ladies and gentlemen.

3 REDIRECT EXAMINATION

4 By BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
5 Defendants:

6 Q Good morning, Ms. Marshall.

7 A Good morning.

8 Q We have never met before. I'm Bryan Reid. I'm the  
9 attorney for Emeritus.

10 I understand that -- now, is your sister representing  
11 you in this litigation?

12 A She has given me advice.

13 Q Okay. What is her name?

14 A Diane Marshall Freeman.

15 Q And what is her phone number?

16 A Her phone number? I need to look it up.

17 THE COURT: We can provide that later. I don't think  
18 we need to have that on the record.

19 MR. REID: Okay. That is fine, your Honor.

20 Q (By MR. REID) So you have had a chance with your  
21 sister to sit down and talk to Ms. Clement about your  
22 testimony?

23 A She said -- we sat down to talk about where I --  
24 my view was between Emeritus and where I'm at now based on  
25 things I learned in the deposition.

26 Q Okay. So did you have a chance to talk about what you  
27 would be testifying about in trial today and -- and  
28 yesterday?

1 A Yes. She went -- I'm sorry. She went over the  
2 subpoena with me.

3 Q Okay. And how much -- how many times did you meet  
4 with Ms. Clement before you came in and testified?

5 A Three, four.

6 Q And Ms. Clement's been providing your transportation  
7 to court and --

8 A Yes.

9 Q -- your lunch during the breaks?

10 A No, not lunch. But, yeah, we --

11 Q And you and I, we have never talked at all about  
12 anything, particularly your testimony, right?

13 A With you? No --

14 Q Okay.

15 A -- we haven't.

16 Q You did mention Ms. Wells. I want to ask you, did you  
17 find Ms. Wells to be ethical and a fair person?

18 MS. CLEMENT: Objection, leading, relevant.

19 MR. REID: I would ask for leeway under 767, your  
20 Honor.

21 THE COURT: Approach, please.

22 I don't need everybody, just two.

23 (Sidebar conference was held.)

24 THE COURT: Request is denied at this time subject to  
25 reconsideration.

26 MR. REID: Thank you.

27 Q (By MR. REID) Ms. Wells, you met with her before your  
28 deposition, correct?

1 A Yes.

2 Q And tell me about that meeting with Ms. Wells.

3 A I met with her and another gentleman, I don't recall  
4 his name, and it went okay. She answered my questions.

5 Q Um, have you ever been encouraged by anyone to not be  
6 truthful?

7 A Oh, no, no.

8 Q Thank you.

9 I know that at the time -- let's see. When did you  
10 start at Emeritus?

11 A I want to say probably end of March or April of 2008.

12 Q Okay. And then you left Emeritus when?

13 A I really want to say September 2010.

14 Q So about two and a half years you worked at Emeritus?

15 A Yes.

16 Q And at the end of those two and a half years, um, why  
17 did you leave?

18 A Several reasons. Um, one, my sister had, um, terminal  
19 cancer and she lived in Oregon, so she moved back down to  
20 stay with me and the family. Um, also, you know, I was  
21 looking at decreasing the travel. They increased the  
22 catchment area, like Yreka now would be a new community that  
23 I would have to go to. Also, I mean, my parents are aging  
24 and just to stay closer to home.

25 Q Okay. Did, um -- who did you talk to about leaving  
26 employment in October, September, October 2010?

27 A You know, quite a few people. I mean, they knew I was  
28 getting unhappy and we had a new RDO, I don't recall her

1 name, and, you know, I made comments, this is, you know, too  
2 much and, you know, I'm looking around. I let Lisa know,  
3 you know, because I wasn't happy.

4 Q Were there any performance issues discussed with you  
5 about how you were doing your job at that point in time?

6 A Only the day we met at Starbucks for her to let me  
7 know that she knew I was unhappy and that it would be a  
8 mutual agreement to leave and that was based on litigations  
9 in the communities, um, buildings that were not in  
10 compliance, me being unhappy.

11 Q Um --

12 (Discussions were had between attorneys.)

13 Q (By MR. REID) Would you kindly -- pardon me. I  
14 apologize, your Honor.

15 Would you kindly pull Exhibit 5030 from the notebooks  
16 behind you?

17 THE COURT: 5030?

18 MR. REID: 5030. It was marked this morning, your  
19 Honor.

20 THE COURT: Five zero three zero?

21 MR. REID: Yes.

22 **(Joint Exhibit 5030 was marked for identification.)**

23 Q (By MR. REID) Do you see Exhibit 5030 in front of  
24 you?

25 A Yes.

26 Q And do you recognize that document?

27 A Not the front page.

28 MR. REID: May I approach the witness, your Honor?

1 THE COURT: Yes.

2 THE WITNESS: Thank you.

3 COURT ATTENDANT: You're welcome.

4 Q (By MR. REID) Do you recognize that document?

5 A Yes.

6 Q Okay. What is that document?

7 A It looks as though it's a resume. A resume. My  
8 resume.

9 Q Your resume?

10 A Yes.

11 Q And, um, do you recognize that as the resume that, um,  
12 you brought to your deposition on March 30th, 2012?

13 A Yes.

14 Q Okay.

15 MR. REID: Your Honor, I would move Exhibit 5030 into  
16 evidence.

17 THE COURT: Any objection?

18 MS. CLEMENT: No.

19 THE COURT: It's admitted.

20 **(Joint Exhibit 5030 was admitted into evidence.)**

21 MR. REID: With permission, I would like to display a  
22 portion of it.

23 THE COURT: Okay.

24 Q (By MR. REID) Okay. So at the time of your  
25 deposition then you had not worked for -- let's see, the  
26 deposition was in March of 2012, correct?

27 A Yes.

28 Q And so you had left Emeritus, um, about 18 months

1 earlier; is that correct?

2 A Yes.

3 Q All right. And, um, so at the time of your deposition  
4 in March of 2012 were you -- were you employed?

5 A Yes.

6 Q Was this -- what was the purpose of this resume that  
7 you brought to your deposition?

8 MS. CLEMENT: Objection, vague, purpose.

9 MR. REID: Okay. I will ask it a different way.

10 THE COURT: Sustained.

11 Q (By MR. REID) What did you use this, this resume for?

12 A I think I was asked to bring in a current resume.

13 Q Did you use this resume to seek employment after you  
14 left, um, Emeritus?

15 A Oh, no.

16 Q Did you use this resume for any particular purpose?

17 A No. It depends on what job I'm going to, I would have  
18 to make the resume fit to that particular employment.

19 Q I see. So when did you create the resume that you  
20 brought to your deposition, if you recall?

21 A I don't recall. I would have to look on my computer.

22 Q When you created the resume did you try to make it as  
23 accurate as possible to describe your work history?

24 A Towards Emeritus, yes.

25 Q Is there parts of your resume that you didn't want to  
26 make accurate?

27 A Oh. I didn't put in my current job, no.

28 Q Okay. But -- so anything that is on your resume you

1     tried to make it as accurate as possible?

2     A       Yes.

3     Q       I would like to talk to you about your job at Emeritus  
4     as described on your resume, okay. Now, the first thing you  
5     mentioned is, um, it says "duties: collaborative team  
6     management." What does that mean?

7     A       When I was hired I understood that collaborative team  
8     management meant a -- it's like a triangle they put up. So  
9     you have, um, collaborations between the regional team, the  
10    community, and also the divisional team. You had the  
11    same -- like a regional director of operations, a regional  
12    director of quality services, and a regional director of  
13    sales and marketing, that is your collaborative team. And  
14    they had that within -- the same model, management model  
15    within the communities.

16    Q       Okay. And then so with that -- uh-oh. With that  
17    collaborative team, um, did each member have a specific  
18    focus of what their role was on the team?

19    A       Yes.

20    Q       And was yours, um -- the next sentence here --  
21    "oversight and monitoring of quality services and risk  
22    management".

23    A       Yes.

24    Q       That was your role?

25    A       Yes.

26    Q       So when you met with the team members you were the  
27    voice of quality services?

28    A       Yes.



1 Q And, um, you say "for multiple communities". And then  
2 it says, "assist staff with community compliance and  
3 regulatory policy and practice." What does that mean?

4 A You know, it's, um, helping the communities as an  
5 advisor or as a resource and ways in which they can become  
6 more compliant and assist in safety and risk management,  
7 liaison between the LPA, how to assist with unusual incident  
8 reports.

9 Q Okay. Were you good at that?

10 A I think so.

11 Q Okay. It says, um, "conduct monthly", I guess,  
12 "annual" -- well, "monthly annual QA survey evaluations."  
13 What does that mean?

14 A Emeritus had tools and these were documents in which  
15 you had to complete. Like when we go into the communities,  
16 we had a site visit report to fill out. At that time they  
17 were kept in binders at the community. Um, monthly or  
18 annually, like the community process review. So different  
19 tools they had to use.

20 Q Community process review?

21 A That is a CPR. Each community annually would have a  
22 group of either the regional team or the vice president  
23 teams to come in and do a review, or individuals from other  
24 communities that we can utilize.

25 Q All right. So the -- the buildings started with ten  
26 and ended with twelve I think?

27 A Twelve or thirteen, something like --

28 Q So the buildings you were responsible for, you were --

1 were you the nurse in charge of the quality services for  
2 those buildings?

3 A As -- with the regional, yes, but individually the  
4 communities had --

5 Q All right. And -- and one of your roles was to do  
6 those monthly and annual quality inspections of all of your  
7 communities, right?

8 A Yes.

9 Q And then, um, it says "complete a written evaluation  
10 tool of the communities quality services by assessment,  
11 interventions, implementations, and evaluation." What does  
12 that mean?

13 A In short, that is a nursing process. Every nurse is  
14 taught, um, how to do a nursing assessment, which includes a  
15 nursing diagnosis, deals with a goal and assessment, it  
16 deals with, um, interventions and plans. So that is a way  
17 of just breaking down a word called "the nursing process."

18 Q Okay. And then it also says, "provide community  
19 in-service training." What does that mean?

20 A Well, um, we were -- one of my roles was to help the  
21 community set up what we call med tech training. Um,  
22 another one was -- let's say at the community, "join the  
23 journey" training, I would communicate with, um, the  
24 national director of memory care -- I think that was the  
25 title at that time -- to see what we can set up to have, you  
26 know, in-servicing at the buildings.

27 Q Okay. So when it says, "provide community in-service  
28 training", what percentage of your time do you think you

1 spent doing that?

2 A Throughout the region, personally going in to do it  
3 myself, ten percent of the time.

4 Q And then it also says, "risk management support."  
5 What does that mean?

6 A Basically risk management support dealt with safety  
7 concerns. So anything that, um, the community would bring  
8 to my attention I would be able to assist them and give them  
9 advice and directions on risk management.

10 Q Okay. And so could you -- could you expand that out,  
11 Ms. Ford?

12 So that is the -- that's the sum and substance of your  
13 description of what you did when you worked for Emeritus, at  
14 least on the resume, right?

15 A Yes. That is -- yes.

16 Q Short. I know you did a lot.

17 So how did you do all of those things?

18 A You know, a lot of time is just putting the right  
19 people sometimes in the right positions. So let's say at  
20 the communities, for me to get a idea of what is going on I  
21 would have a very good wellness coordinator or nurse. Um,  
22 we also did it by conference calls with the nurses once or  
23 twice a month or once a month. We had weekly development  
24 calls with each community. We also had, um, business  
25 development calls every Friday. And we had site visits. We  
26 also had, um, the quality service person in the community  
27 had the availability to contact me directly, not just  
28 necessarily going through their executive director.

1 Q Okay. Were you on the road -- did you have a  
2 schedule, like certain days you were on the road and certain  
3 days you were at home or did it vary?

4 A You know, it changed. Originally we were told we can  
5 communicate with the communities by phone. Then we had to  
6 be in the community, what we call -- they were color-coded,  
7 high risk communities and those that were low risk, and  
8 based on those we had to spend more time at that community.  
9 Um, so having such a catchment area I would definitely try  
10 to make it so that I could spend more time at communities  
11 that were centrally located. So if I was in Sacramento, I  
12 would get those three buildings in Sacramento. If I was in  
13 Napa, I would go to Napa, Vacaville, those communities up in  
14 that area.

15 Q So you tried to do it in a cluster it sounds like?

16 A Yes.

17 Q And the buildings that you were having issues with and  
18 needed attention, you tried to spend more time there?

19 A One of the regional team would.

20 Q But how about you? I mean, when you're going out and  
21 visiting, was that one of the factors you thought about?

22 A Oh, I did that, yes. I spent time in the buildings.

23 Q All right. And when you're in a building that is,  
24 whatever color it is, it's having challenges and you're  
25 there, what are you doing?

26 A Well, we usually have what we call a quality services  
27 site visit form. So during that site visit form it dealt  
28 with ten or twenty issues to look at. And then after we

1 have that, we were supposed to sit down or we did sit down  
2 with the CTM team, depending if sales and marketing was  
3 actually needed to be involved, and discuss that quality  
4 site visit. We would also leave a copy at the community in  
5 a binder. It was like a regional team binder.

6 Q Now, quality -- as the, um, quality services person  
7 doing a quality site visit, what kinds of things were you  
8 looking at when you were in the buildings?

9 A Well, initially it was if there was a main concern  
10 with the resident, we would handle that. I would handle  
11 that. Um, also we would sit with the staff, review the  
12 medication program, um, arbitrarily pull charts to see if  
13 things were, um, in relation to the quality site visit form,  
14 talk to, um, residents that lived at the community, if need  
15 be, and also one of the important things was to actually eat  
16 at the community because if we wouldn't eat at it then, you  
17 know, that tells us a lot. We also had to, I think, do a  
18 walk-through of the building for safety concerns.

19 Q Were you out on the road and in communities every  
20 week?

21 A Yes.

22 Q And what was your goal when -- what was your goal when  
23 you went to a community?

24 A It would have varied, but basically it was quality  
25 services. There was the site visit form that we would have  
26 to complete. Sometimes it was just to meet family members,  
27 so I would make appointments. If a family member was in  
28 Villa Del Rey and they were going to be there, then I would

1 make a specific site visit.

2 Q Why would you want to meet a family member?

3 A Um, for Emeritus it was basically customer services  
4 was very important, so we wanted to make sure that we were  
5 able to make them feel comfortable being in the communities.

6 Q I want to clear something up. As -- as a registered  
7 nurse in California and the regional director of quality  
8 services, did it -- did you ever tell anyone to keep a  
9 resident in one of your buildings that you thought the  
10 facility should not keep?

11 A No.

12 Q And as the regional director of quality services  
13 responsible for those buildings, did you ever direct your  
14 staff to accept a resident whose needs you didn't think they  
15 could meet?

16 MS. CLEMENT: Leading.

17 THE COURT: She can answer it.

18 THE WITNESS: Not if systems couldn't be put in place,  
19 no.

20 Q (By MR. REID) As you sit here -- I don't know  
21 whether -- it's a long time ago, but can you think of  
22 instances where residents were not admitted to a community  
23 because their needs couldn't be met while you were under --  
24 in any of your buildings?

25 A I'm sure, but, no, I can't recall a particular  
26 resident.

27 Q And as you sit here, knowing it was a long time ago,  
28 but as the regional director of quality services for a

1 number of buildings for Emeritus, um, can you think of  
2 instances where, um, residents moved out of the building  
3 because it was determined that their needs could not be met  
4 in the building?

5 A Yes. They went -- yeah.

6 Q Now, would you kindly pull up the portion we were  
7 looking at before?

8 That brief summary of your job, did that take 100  
9 percent -- 100 percent of your professional time to do those  
10 things while you worked for Emeritus?

11 A No.

12 Q Okay. What other things did you do with your  
13 professional time as an employee of Emeritus other than  
14 these general categories?

15 A I would -- I would say meeting with family members,  
16 um, actually making phone calls to -- you know, I had to go  
17 to court a couple of times for an employee in Lodi because  
18 Ms. Withers couldn't show, the RDO. I went to court for a  
19 resident and family members that was in Westwind Gardens,  
20 um --

21 Q Okay. Um --

22 MS. CLEMENT: Had the witness finished answering the  
23 question, your Honor?

24 THE COURT: It seems to me.

25 Q (By MR. REID) Done? I didn't mean to interrupt you.

26 A No. I'm cool. I'm fine. Sorry.

27 Q You mentioned in answering the question about your job  
28 that you would have conference calls and you mentioned

1 different people. Were you having conference calls with  
2 your communities and the people that you were -- the  
3 communities you were supporting or was it corporate people?

4 A A combination of both. I think one of them, Lisa and  
5 I were in a hotel room and a family member was concerned  
6 about a relative at Hazel Creek and she got to monitor how I  
7 talked to a resident, how I can alleviate and -- not what I  
8 said, more how I said that, and it turned out really well.

9 Q Okay. Did you -- in those family meetings when you  
10 would sit down with a family, did you ever lie to them?

11 A No. It's not what you say, it's how you say it. But,  
12 no, I never lied to them.

13 Q Okay. Did you ever tell a family member that, um,  
14 they should leave their -- their loved one or admit a loved  
15 one to one of your buildings even though you didn't think  
16 that the staff could meet the needs?

17 A I'm sorry, could you repeat that?

18 Q Uh-huh. Did you -- in talking to family members --

19 A Uh-huh.

20 Q -- did you ever, to your recollection, um, tell family  
21 members or assure family members that their resident --  
22 their loved one's needs could be met when you didn't think  
23 they could be met?

24 A No.

25 Q Did you ever train any of your staff to do that, to  
26 tell family members that their loved one's needs would be  
27 met even if they didn't think they could be?

28 A Did I? No, I didn't train.



1 Q Now, yesterday you brought, um, to trial some  
2 documents, and I want to go through some of those with you,  
3 okay?

4 A Okay.

5 Q Um, they were marked Exhibits 264 through 276. First,  
6 I just want to ask you, where did these documents come from?

7 A Communications between me and whoever they were  
8 written. Also, some of them came from corporate because  
9 they were sent to the regional team to discuss.

10 Q Got it. That was a good answer to a bad question.

11 I mean, were they in a file in a office in your house  
12 or were they on your computer? Where were -- where were you  
13 keeping them?

14 A Oh, okay. Um, actually, I have a home office, yeah.  
15 I also have a flash because I was able to not always use my  
16 computer in the communities.

17 Q The documents that were marked yesterday and  
18 Ms. Clement went over with you, were those all of the  
19 documents that you could find that relate to the issues that  
20 you have been testifying about?

21 A Not all of them.

22 Q So you have other documents at home that you didn't  
23 bring?

24 A I have my calendars, yeah.

25 Q Okay. And we have your calendar. So, um, other than  
26 your calendar and these exhibits that were marked yesterday  
27 and we have gone through with Ms. Clement, are there any  
28 other documents you have in your home office or in your

1 possession anywhere related to the issues you testified  
2 about?

3 A Oh, yes.

4 Q Okay. Where are those documents?

5 A At home.

6 Q How did you decide which documents to bring to court?

7 A Regarding -- I think most likely it was the case. So  
8 quality services concerns, um, concerns related to  
9 discovering some information.

10 Q Okay. So I want to make sure I understand. You went  
11 through the file you had at home and any documents found  
12 concerning quality service concerns you brought to court?

13 A Related to this case, yes.

14 Q And have you given those documents to anybody?

15 A Yes.

16 Q The ones you didn't bring?

17 A I'm sorry?

18 Q The documents you didn't bring to court, have you  
19 given them to anybody?

20 THE COURT: You mean all of the other documents she  
21 might have related to Emeritus, has she ever given it to  
22 anybody?

23 MR. REID: Right.

24 THE COURT: Okay.

25 THE WITNESS: Yes.

26 Q (By MR. REID) All right. Who did you give the other  
27 documents to?

28 A You know, um, Ms. Clement, yeah.

1 Q So the documents that were marked as exhibits for this  
2 trial that you brought yesterday are the ones that  
3 Ms. Clement decided to mark and bring to trial?

4 MS. CLEMENT: Objection, your Honor, lacks foundation.

5 THE COURT: Are you leading?

6 MR. REID: I'm sorry. I will ask it a different way.

7 Q (By MR. REID) Did -- did Ms. Clement confer with you  
8 about what documents to bring to court?

9 A Regarding this case, yes.

10 Q Were there any documents that she told you not to  
11 bring to court?

12 A No. She just told me the ones she wanted, she was  
13 going to use.

14 Q Okay. I want to ask you first about Exhibit 264.

15 A Can I get that?

16 Q Sure. Yes, please. Thank you. That's 264, the  
17 dashboard document --

18 A Yes.

19 Q -- that you talked about?

20 I want to find out a little bit more about the level  
21 of care, um, assessments that were going on in, um, late  
22 2007, early 2008. In fact, you weren't even there in '07,  
23 so let me start over.

24 You started in, um, early 2008, correct?

25 A Yes.

26 Q Okay. Was -- was it communicated to you that there  
27 was a need to make sure that the residents were being  
28 properly assessed so that their, um, level of care was being

1 properly identified on the reports?

2 A Yes.

3 Q Was there ever a time that you were told or became  
4 aware that because of the merging of the companies that  
5 there were different systems in place and there was some  
6 confusion about levels of care?

7 MS. CLEMENT: Objection, your Honor, leading.

8 THE COURT: Sustained.

9 Q (By MR. REID) Did you ever observe any or become  
10 aware of any challenges in charging through levels of care  
11 as a result of the merging of the companies?

12 MS. CLEMENT: Leading.

13 THE COURT: Overruled.

14 THE WITNESS: I'm sorry, can you repeat that?

15 MR. REID: Could I request, your Honor, the question  
16 to be read back?

17 THE COURT: Go ahead, Brooke.

18 (Whereupon the last question was read back as requested.)

19 THE WITNESS: All I know is about the Vigilant  
20 assessment. I don't know what challenge they had before  
21 Summer --

22 Q (By MR. REID) Okay. That is fine.

23 Um, what were the challenges with the individual  
24 assessments that you referenced?

25 A I was just starting to learn the Vigilant assessment,  
26 and the communities were getting acclimated to the Vigilant  
27 assessment tool.

28 Q Okay. Did you -- was there ever -- let me see how to

1 ask this. In the meetings that you had with, um, the other  
2 members of your collaborative team, did you ever hear  
3 concerns related to people that were in the communities  
4 receiving more care than they were being charged for due to  
5 their assessments?

6 A More care? Um, prob -- yes. Sure. Yeah.

7 Q Now, I would like to ask you -- just kind of go in  
8 order here. Exhibit 265, if we can pull that up? Okay.

9 Now, do you have that in front of you?

10 A Yes.

11 Q Okay. This is a -- remind the -- well, remind the  
12 jury what this document is.

13 A This is a document sent from at the time my -- the  
14 VPO, Catherine Ratelle, to all executive directors and  
15 regional and divisional team members regarding a new  
16 California resident agreement they were putting in place for  
17 new residents that came in.

18 Q Okay. And was this e-mail -- what is the date of the  
19 e-mail?

20 A July 14th, 2008, at 2:38 p.m.

21 Q And so Ms. Ratelle, she was vice president of  
22 operations, is that correct, for the division?

23 A Um, yes.

24 Q So she was one level up from you?

25 A Yes.

26 Q But she was the operations, um, part of the triangle,  
27 correct?

28 A Yes. Her, Lisa and, it was, um, Angela as their CTM.

1 Q Okay.

2 A I think, yeah.

3 Q Okay. And this, um, e-mail, you brought it to court  
4 and recognize it, what was the challenge that -- that you  
5 were aware of concerning this need to get new resident  
6 agreements signed?

7 A If I remember they were changing to a new agreement  
8 form, um, for residents to come in and they weren't being  
9 implemented on time so it's -- this e-mail is saying that  
10 the goal is to have them completed and signed within three  
11 months.

12 Q Okay.

13 A Right.

14 Q And so the -- the, um, the operations team --  
15 remember, this is -- this is an e-mail that says, um, sales  
16 and your commitment to sales is your highest priority,  
17 right? Right, it says that?

18 A Yes.

19 Q Okay. And what did you understand that specific  
20 directive to mean?

21 A That we are committed to sales and that is the highest  
22 priority.

23 Q As opposed to getting this agreement signed or  
24 something else?

25 A Oh, sales was always first, you know. The agreement  
26 was brought up under the fact that, um, we are behind, so I  
27 think a couple of things are on this.

28 Q All right. Now, is there anywhere in this e-mail that

1 Ms. Ratelle is communicating that, um, the residents' needs  
2 aren't a priority?

3 MS. CLEMENT: Leading.

4 THE COURT: Sustained.

5 Q (By MR. REID) Does this e-mail at all address the  
6 needs of the residents?

7 A Only thing I could see is that, um, they want to break  
8 down barriers. If it's a RCD, they want to make sure we  
9 move them -- have the ability to move them in, and they can  
10 only be moved in if they have a assessment from the RCD or  
11 ED in the community.

12 Q I'm sorry, I don't have it in my system. Can you  
13 direct me to where that is in -- in what you're looking at?

14 A So one, two, three -- the fourth paragraph down where  
15 it says "breaking down barriers", etcetera, prior to that it  
16 says, um, that we do five -- that the RCD would do, um, five  
17 external calls a week using, um, another format called YGL,  
18 You Got Leads, um, besides making up the follow-up calls and  
19 having formal meetings each week to break down barriers, and  
20 that is usually barriers to moving in.

21 Q Okay. So as the regional vice president or regional,  
22 um, director of quality services, did -- when you received  
23 this on July 14th, 2008, did this cause you concern that,  
24 um, residents' needs were not important to, um, Emeritus'  
25 business operation?

26 A Well, sales were more -- yes, sales were important.

27 Q Okay. And residents' needs aren't important?

28 A According to this e-mail it doesn't -- the only thing

1 it relates to to me would be the fact that what we can do to  
2 help break down the barriers because they can't come in  
3 through sales and marketing unless we are there to help  
4 assist.

5 Q Right. And when you say "we are there to help  
6 assist", that means that at the end of the day the quality  
7 services people have to decide whether the person should  
8 move in or not; is that correct?

9 Q Well, the --

10 MS. CLEMENT: Leading. Leading.

11 THE COURT: Sustained.

12 Q (By MR. REID) What's -- what's the quality services  
13 people role when the sales people are out marketing the  
14 building?

15 A Well, it's twofold because the quality services person  
16 also, um, had their hand in sales and marketing. They would  
17 do site visits -- or home visits I think we called them  
18 then, they would also be able to be on call if they had to  
19 go out to a community to do a quick assessment or an  
20 assessment but that also included the executive director.  
21 They had that role also, they can go out and fill out, um --  
22 to do an assessment.

23 Q Okay. So the sales and marketing people are out  
24 developing the leads, if I understand what you're saying,  
25 right?

26 A Yes.

27 Q And before somebody moves in does the -- the quality  
28 person have a say in that?



1 A Or the executive director. They would have to be able  
2 to make sure if they were, um -- the assessment was done on  
3 them prior to -- they had their 602. So let's say if the  
4 LVN was out, or the wellness coordinator was out, the  
5 executive director can do that.

6 Q Okay. Does it require at some point in time somebody  
7 in the community to make a decision about whether the needs  
8 could be met or not?

9 A Yes.

10 Q And is -- was it ever communicated -- was it  
11 communicated in this e-mail to you that people should move  
12 in to the communities regardless of whether their needs  
13 could be met?

14 MS. CLEMENT: Excuse me, your Honor, leading.

15 THE COURT: Ladies and gentlemen, it's time for our  
16 mid-morning break. Please leave your notebooks on the  
17 chairs. Remember the admonitions. I will see you back at  
18 ten to. We are in recess.

19 If you would just be back ready to go on the stand at  
20 ten to.

21 **(The following proceedings were held outside the presence of**  
22 **the jury:)**

23 THE COURT: All right. Counsel, I just want to  
24 reiterate what is in Evidence Code section 764 about a  
25 leading question. It's a question that suggests to the  
26 witness the answer that the examining party desires.  
27 Sometimes it's a very fine line the way the question is  
28 posed, whether or not it is suggesting an answer or not, but

1 I would like us all to be cognizant of that, both sides,  
2 Plaintiffs and Defendants, since we seem to be getting a lot  
3 of objections in that area, okay?

4 MR. REID: Yes, your Honor.

5 THE COURT: We are in recess then.

6 Is there anything else?

7 MR. REID: Can I just make a quick observation? Um,  
8 this witness would not meet with us before trial. Um, we  
9 have had no contact with this attorney that she says she  
10 has. She has met with Ms. Clement and practiced her -- her  
11 testimony. Um, I -- and she -- she -- obviously the sum and  
12 substance of her testimony is not aligned with my client,  
13 and I -- I am asking for some leeway. I'm trying to be  
14 careful -- some leeway to under Evidence Code section 767 to  
15 get to the truth and get there in a somewhat expeditious  
16 fashion.

17 THE COURT: You know, it's interesting that you say  
18 that you don't think she is, um -- looks kindly upon your  
19 client, but I have been listening to the answers to the  
20 questions and since we are outside the presence of the jury,  
21 I can say a number of her answers were, I think, helpful to  
22 your side as well as helpful to Ms. Clement. She seems like  
23 a pretty even witness to me in terms of what she is saying.  
24 Um, I don't see her -- I have observed her. I have listened  
25 to her answers. She doesn't appear to be hostile one way or  
26 the other. You did indicate that she has declined to meet  
27 with you. I don't know that you mean, you asked to meet  
28 with her and she said no?

1 MR. REID: Yeah. She stopped returning our calls.

2 THE COURT: Okay. And when did you last contact her?

3 MS. WELLS: Last week we attempted to make sure she  
4 was going to comply with the subpoena because up to that  
5 point we believed we were representing her and didn't want  
6 her to not show up.

7 THE COURT: I think we have left out a little bit  
8 here. My understanding at sidebar is that you have  
9 disclosed her as a witness that, in fact, you were  
10 representing.

11 MR. REID: Correct.

12 MS. WELLS: That was our understanding.

13 THE COURT: And that was reiterated again to  
14 Ms. Clement. So I'm in a situation where up until the time  
15 she shows up at trial it appears you are representing her.  
16 She is aligned with the defense side of the case and then we  
17 learn during the testimony that she's met with Ms. Clement  
18 and she has not met with you. So, um, I can only listen to  
19 the testimony as it comes in and decide if she is, in fact,  
20 biased or prejudiced or somehow leading in favor of one side  
21 or the other.

22 What I can tell you from the party on the bench who  
23 has never seen this witness before and never heard this  
24 witness before, um, she appears pretty much a straight  
25 shooter here. If there was something you could show me that  
26 you felt clearly biased or prejudiced her in favor of one  
27 side over the other, I might change my mind on that. I  
28 think we are doing okay the way we are right now.

1           Everybody take a break. Voices are kind of low. I  
2           don't know if it's like Tuesday morning malaise or what it  
3           is, but we have got to pick this up and wake people up.

4           Yes?

5           MS. CLEMENT: Your Honor, I was just handed two  
6           documents that they have marked, um, or three, I guess,  
7           Exhibits, um, 5028, 29 and 5031. Um, I don't know if there  
8           is anymore like this, but these are documents that are  
9           clearly attorney-client privilege documents from lawyers,  
10          like from the first lawyers representing Emeritus back and  
11          forth, including Doris Marshall, all requests for documents  
12          that if they were going to produce these should have been  
13          produced in the course of discovery and were not produced  
14          based upon attorney-client communications. Um, I think that  
15          we should have a discussion of this outside the presence of  
16          the jury when they are not, um, in the room for this.

17          THE COURT: First thing I would like you to do is meet  
18          and confer on this over the break and then, um, I will check  
19          with you at ten to 11:00 and see where we are on this, okay?

20          MS. CLEMENT: And one last thing, your Honor. Um, I  
21          don't know if Ms. Marshall was allowed to get that out in  
22          testimony, but she did, um, say that she had contacted the  
23          Defense at the same time that she got the subpoena  
24          originally for trial and she sent them the same message she  
25          sent me, I would only be willing to if my sister was  
26          present, and I responded and they did not.

27          MS. WELLS: I have not received any communication like  
28          that from her.

1 MS. CLEMENT: She still has it on her phone.

2 MS. WELLS: From Doris?

3 THE COURT: Let's take our break. I will see you back  
4 after the break. We are in recess.

5 (Recess.)

6 (Court reporter switch.)

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1           **(The following proceedings were then had in open**  
2 **court, outside the presence of the jury.)**

3           THE COURT: All right. Before the jury is brought  
4 in, I'd just like to put on the record I've met in chambers  
5 with counsel on the issue of attorney-client work product  
6 that we raised earlier, and I have given them my ruling. I  
7 will do that at a later time on the record.

8           **(The following proceedings were then had in open**  
9 **court, in the presence of the jury.)**

10          THE COURT ATTENDANT: Please come to order.  
11 Department 45 is once again in session.

12          MR. REID: Thank you, your Honor.

13          With the Court's permission, I'd like to display  
14 Exhibit 265 on the Elmo.

15          THE COURT: All right. That's been admitted. So go  
16 ahead.

17          MR. REID: Thank you.

18          Q.        (By MR. REID) And you have Exhibit 265 in front of  
19 you, correct?

20          A.        Yes.

21          Q.        Uh-oh.

22          That's the memo -- the e-mail we were talking about  
23 right before lunch. And I just want you to point out in  
24 that e-mail, because you have a hard copy in front of you,  
25 anywhere that it says that quality care is not important.

26          A.        There's nowhere on here that says quality care is  
27 not important.

28          Q.        Okay. Thank you.

1           MR. REID: Now, let me -- if I might, your Honor,  
2 this one I have to put on the Elmo, too. Exhibit 266 has  
3 been admitted, I believe.

4           THE COURT: Yes, it has.

5           MR. REID: May I display that?

6           THE COURT: Go ahead.

7 Q.       (By MR. REID) Could you turn to Exhibit 266,  
8 please.

9 A.       Yes.

10          THE COURT: You know, you do have the ability to  
11 make it bigger.

12          MR. REID: Here we go. Whoops.

13          JUROR: Oh, that's better.

14 Q.       (By MR. REID) Okay. Exhibit 266, what is that  
15 document?

16 A.       This is a document from Justin Hutchens of high  
17 importance, a summary saying that originally RDSMs that  
18 assist with the CPRs, they don't need to.

19 Q.       Okay. "RDSM," what is that?

20 A.       The Regional Director of Sales and Marketing, part  
21 of the CTM, or collaborative team management, at the  
22 regional level.

23 Q.       Okay. And -- now, is there anywhere in this e-mail  
24 from Mr. Hutchens that says that quality care isn't  
25 important?

26 A.       No.

27 Q.       How did quality care in your experience drive sales?

28          MS. CLEMENT: It's vague.

1 THE WITNESS: It --

2 THE COURT: She can answer.

3 THE WITNESS: Well, it drives sales because part  
4 of -- twofold. The person that's a quality service person  
5 in the community would go out and do sales and marketing as  
6 part of her, um, focus. Um, quality services assisted in  
7 sales and marketing, in making sure that there wasn't  
8 barriers we couldn't put interventions against for people  
9 to move in.

10 Q. Okay.

11 A. So it's not -- it's not just independent. They're  
12 interdependent when you even do a collaborative team.

13 Q. Okay. Does -- in your experience, if the staff is  
14 doing a good job taking care of the residents, does that  
15 have some effect on sales?

16 MS. CLEMENT: Leading.

17 THE COURT: She can answer.

18 THE WITNESS: Yes.

19 Q. (By MR. REID) Okay. I'd like to have you turn to  
20 Exhibit 268 now.

21 MR. REID: That's been admitted into evidence. And  
22 it is in our system.

23 Is it okay if we display that, your Honor?

24 THE COURT: Yes.

25 MR. REID: If you could highlight the bottom  
26 portion, Miss Ford.

27 Q. (By MR. REID) This is an e-mail that you were asked  
28 questions about by Miss Clement yesterday.



1           And who was -- who is Kimberly Moes again? Can you  
2 remind us of that?

3           A.       She was a wellness coordinator originally in Citrus  
4 Heights.

5           Q.       Okay. And in this e-mail, as you were asked about  
6 yesterday, Kimberly Moes is asking a question about --  
7 well, what's the sum and substance of what she's asking?

8           A.       Actually, um, one of the systems we put in place for  
9 residents that are on insulin is what's called "Dial a  
10 Pen." And it seems as though her question deals with  
11 having to -- when you --

12           THE COURT REPORTER: I'm sorry. "When you...?"

13           THE WITNESS: When you dial the pen, you hear  
14 clicks. So she was posing the question whether they're  
15 able to count the clicks when you turn the dial-a-pen.

16           Q.       (By MR. REID) Whether the med techs as part of  
17 their role are allowed to count the clicks? Is that -- do  
18 I have that right?

19           A.       Yes.

20           Q.       Because she's wondering whether that's something  
21 that would require a licensed nurse to do, and she's  
22 seeking clarification?

23           A.       Yes.

24           MR. REID: All right. Now, we didn't yesterday go  
25 through the -- let's -- can you pull up the top part now,  
26 Miss Ford.

27           Your Honor?

28           THE COURT ATTENDANT: I'll --

1 MR. REID: Thank you.

2 Q. (By MR. REID) She was writing -- Kimberly Moes was  
3 writing to somebody named Nicole Jackson; is that right?

4 A. Yes.

5 Q. And who is Nicole Jackson in this organization?

6 A. Originally, she started out a quality services  
7 specialist for the Region One and Two.

8 Q. And at this point in time, apparently her title is  
9 Quality and Risk Specialist.

10 So what was her role? What was she doing at that  
11 point in time?

12 A. She was assisting Region One and Two with quality  
13 services risk management.

14 Q. So was she assisting you? Was she on your level, or  
15 where was she?

16 A. Well, they were probably put a level before -- you  
17 know, beneath.

18 Q. Okay. It looks like Kimberly is reaching out to  
19 Nicole for some information.

20 Was that one of the roles that Nicole played?

21 A. Yes. I think at the time I was probably out.

22 Q. Okay. Now, in this document you produced, it's been  
23 admitted, and this is Nicole responding.

24 Can you look at the e-mail and tell us what time  
25 Kimberly made the inquiry and what time Nicole responded.

26 A. It seems as though this was sent at -- April 12th  
27 (sic), 2009, at 6:32 p.m. And it seems as though Kim wrote  
28 it at -- April 2nd, 2000 (sic), at 6:18 p.m.

1 Q. Okay. So less than a half-hour after the inquiry  
2 was made, Nicole responded?

3 A. Yes.

4 Q. Okay. Now, looking at Nicole's response, and  
5 directing your attention then to the first bullet point,  
6 can you tell the jury -- well, Nicole says: Be sure of the  
7 following.

8 And what's the first bullet point communicating to  
9 the medication coordinator at Emerald Hills -- or the  
10 wellness coordinator at Emerald Hills?

11 A. I'm sorry. You want me to read the bullet point  
12 or --

13 Q. If you want to read it or just describe it to the  
14 jury. Either way. However you're more comfortable.

15 MS. CLEMENT: Objection; it's compound.

16 THE COURT: I'm sorry?

17 MS. CLEMENT: Compound.

18 THE COURT: He's just trying to help her out there.  
19 You can either read it or explain it.

20 THE WITNESS: Okay. I'll read it.

21 "Thirty units of long-acting insulin. When the  
22 orders and actual medication come in to the community,  
23 please confirm this with a licensed professional, or call  
24 the pharmacy to confirm, by reading the label and the dose  
25 for confirmation of the appropriateness of the dose.  
26 Document your call, your conversation, and whom you spoke  
27 with to cover you, the community, and the company."  
28 (As read.)

1 Q. (By MR. REID) Okay. That first bullet point, did  
2 you agree with that -- those -- that information that  
3 Nicole was sharing with Kimberly?

4 A. Yes.

5 Q. Okay. And then the second bullet point, what is  
6 Nicole advising Kimberly in that section?

7 A. It says: Training must be provided to the  
8 caregivers, and you, by a licensed health professional,  
9 prior to the start of care, and document regarding --  
10 documentation -- I'm sorry -- and documented regarding  
11 diabetes, signs and symptoms to observe for and report as  
12 well as specifics to the resident's illness. Even if they  
13 have had a training before, incidental medical services,  
14 Title 22, training is provided relative each individual's  
15 care plan. (As read.)

16 Q. Okay. What does that mean?

17 A. That training should be provided to the healthcare  
18 staff by a licensed professional.

19 Q. To the healthcare staff for the --

20 A. Caregivers.

21 Q. To the caregivers.

22 A. Excuse me. Yes.

23 Q. Okay. And do you agree with that instruction from  
24 Nicole to Kimberly?

25 A. That they need training, yes.

26 Q. And then the third bullet point, what's being  
27 communicated there?

28 A. All must know that they are not poked for test, dial

1 the pen, or inject the medications. They can count the  
2 clicks with the residents. They can support, um, her hands  
3 or wrist.

4 Q. Do you agree with that instruction by Nicole to  
5 Kimberly?

6 A. Yes.

7 Q. Okay. Is there anything about what Nicole  
8 communicated to Kimberly that is of concern to you?

9 A. No.

10 Q. Did you understand --

11 A. Well --

12 Q. I'm sorry?

13 A. Coming to, um -- I'm sorry. Where they say "they  
14 can count the clicks with the residents" --

15 Q. Mm-hmm.

16 A. -- or that they can support her hands, it probably  
17 could have been a little bit more defined.

18 Q. Okay. At any rate, did you understand anything  
19 about Nicole's communication with Kimberly that would --  
20 strike that.

21 Do you understand Nicole's communication with  
22 Kimberly to tell Kimberly to keep a resident who can't  
23 participate in the insulin process as described in the  
24 e-mail?

25 MS. CLEMENT: Objection; it's vague.

26 THE WITNESS: I'm sorry.

27 THE COURT: I'm sorry. Hold on a second.

28 MS. CLEMENT: It's also leading.

1 THE COURT: Sustained.

2 Q. (By MR. REID) What -- what about this e-mail  
3 indicates that Nicole wanted Kimberly to keep a resident  
4 even if the resident wasn't able to administer their own  
5 insulin, if at all?

6 MS. CLEMENT: It's leading.

7 THE COURT: Rephrase.

8 Q. (By MR. REID) Does this e-mail --

9 MR. REID: I'm going to move on, your Honor.

10 Q. (By MR. REID) Now, the next in order is  
11 Exhibit 269. And you were asked some questions about it,  
12 but it has not been moved into evidence. So I want to ask  
13 a few more questions.

14 What is Exhibit 269?

15 A. Originally, it was an e-mail sent to me regarding a  
16 write-off needed for the Emerald Hills, Myron Boice and  
17 Joan Boice, and the amounts.

18 Q. Okay. And then what did you do as a result of  
19 receiving the e-mail?

20 A. I sent an e-mail to the executive director and the  
21 nurse at Emerald Hills at that time to investigate -- well,  
22 I asked particular questions. Basically I wanted to let  
23 them know if this has been taken care of and information  
24 that I needed to be gathered, such as, were there any  
25 concerns or events, any potential litigations.

26 And I did let them know that this is probably before  
27 they started. So to have Kim -- and that was Kim Moes --  
28 in the community investigate the records. And I'll look up

1 what they consider to be "highlights" at the -- Emeritus,  
2 which is a combination of events that happened to  
3 residents, like falls, sent out 911. I don't think --

4 THE COURT REPORTER: I'm sorry. "I don't think..."?

5 THE WITNESS: -- deaths were on there. They're  
6 highlights. But, injuries. And, um -- and, also, if this  
7 has already been taken care of, that I just apologized in  
8 having to repeat things.

9 Q. (BY MR. REID) And what did you learn as a result of  
10 your inquiry?

11 A. From -- the top part of the e-mail is from the ED at  
12 that time, stating that -- he talked to Melissa. And I'm  
13 not sure if that was -- what Melissa that was. And Rich,  
14 the executive director, spoke with Melissa, and her  
15 response to that.

16 Q. Okay. Did you find out as of April 23rd, 2009  
17 whether there was some thought that the Boice family might  
18 be considering litigation?

19 MS. CLEMENT: Hearsay, your Honor.

20 THE COURT: Any exception?

21 MR. REID: Well, it's a business record, your Honor.  
22 It's been authenticated by the witness. She's been asked  
23 questions about it on Miss Clement's questioning.

24 THE COURT: I don't think the entire business record  
25 exception has been established at this point. If you want  
26 to do that, you can.

27 MR. REID: Okay.

28 Q. (By MR. REID) This e-mail exchange between you and

1 Mr. Lee, was this -- is this an example of one of the kinds  
2 of e-mail communications you might have with communities in  
3 your ordinary course of business?

4 A. Yes.

5 Q. And when you prepare an e-mail like this, your  
6 notes, are you obligated to be accurate and complete and  
7 truthful in your e-mail?

8 A. Yes.

9 Q. And is there an expectation that anybody  
10 corresponding with you would also be accurate and truthful  
11 and complete in their correspondence with you?

12 A. Yes.

13 MS. CLEMENT: It lacks foundation, and leading.

14 THE COURT: Sustained.

15 MS. CLEMENT: Move to strike.

16 THE COURT: Granted.

17 Q. (By MR. REID) Do you have any reason to believe  
18 that the information communicated back to you from Mr. Lee  
19 in this e-mail is not accurate?

20 A. No.

21 Q. Do you have any information to believe that the --  
22 that when Mr. Lee entered this information, it wasn't at or  
23 about the time he learned of the facts in the e-mail?

24 A. I don't understand. Or could you repeat that,  
25 please.

26 Q. Yes.

27 The facts communicated to you in the e-mail back  
28 from Mr. Lee --



1 A. Okay.

2 Q. -- do you have any reason to believe that -- that  
3 Mr. Lee did not obtain the information about the time that  
4 he wrote you the e-mail?

5 A. I think it was the same time. Yeah, the same time.

6 Q. And these e-mails, this document, Exhibit 269, did  
7 you maintain this in the ordinary course of your business  
8 as a regional quality services director at Emeritus?

9 A. I maintained the e-mail, yes.

10 MR. REID: I'd offer Exhibit 269 into evidence, your  
11 Honor.

12 MS. CLEMENT: It's still hearsay, your Honor.

13 THE COURT: There are two levels of hearsay in here,  
14 if not three. You may have succeeded in jumping through  
15 the first hurdle, but not the rest.

16 MR. REID: Okay. That's fine. I will move on.

17 Q. (By MR. REID) Exhibit 270, could you turn to that.

18 You were asked questions about Exhibit 270 by  
19 Miss Clement. Briefly, can you remind the jury what this  
20 is.

21 A. This was a documented -- document written June 16th  
22 of 2009, from an employee in our Rancho Solano community.  
23 Her name -- this was a med tech that wrote to me, sent this  
24 e-mail to me, Rovina Jones. And it describes basically an  
25 hourly progression of concern she has with -- at  
26 Emerald Hills -- at Rancho Solano community.

27 Q. Okay. And this communication that you received from  
28 Ms. Jones, can you tell the jury whether she was -- what

1 kind of frustrations was she expressing to you that day?

2 A. To summarize it or to read it?

3 To summarize it, she was concerned about residents'  
4 complaints, med room, the medication room. She was also  
5 concerned about the wellness stations, such as memory care.  
6 She seemed to be concerned about staffing. She was also  
7 concerned about insulin injections and the time frame that  
8 they're actually submitted. Staff meetings. Concerns  
9 that, um, people are -- I guess, residents are walking out  
10 and unkept.

11 She also was talking about, um -- definitely  
12 mentioned that she did speak to me. She's also concerned  
13 that, um -- the unkept facility. That they're not getting  
14 adequate time for lunch, or their lunch schedules.

15 Q. The staff?

16 A. The employees.

17 Q. Yeah.

18 A. The staff. And -- and her concerns about the p.m.  
19 shift.

20 Q. Okay. What was the date of that communication you  
21 received?

22 A. Well, it was written -- when I received it?

23 Q. Yes.

24 A. June 19th, 2009, at 1:25 p.m.

25 Q. Okay. Now, when you received this memo, did it  
26 cause you concern?

27 A. Yes.

28 Q. Why?

1 A. Because it has -- it was definitely something you  
2 would want to follow up with the community, with the  
3 executive director.

4 Q. Okay. When you receive a communication like this,  
5 is it something that you back-burner and take care of when  
6 you can?

7 A. Well, we prioritize it. So I don't know what else I  
8 had that day, but it's something that would have to be  
9 answered.

10 Q. Okay. Do you have a specific memory of this  
11 particular occurrence?

12 A. I want to say yes, only because I think we met as a  
13 CTM with the community.

14 Q. Okay. And what was the purpose of meeting as a CTM  
15 with the community?

16 A. You know, something tells me -- and I don't know if  
17 we had an executive director in the building at the time or  
18 if we did (verbatim), and we wanted to make sure that the  
19 staff was heard.

20 Q. Okay. And was the staff heard?

21 A. I --

22 MS. CLEMENT: Objection; it lacks foundation.

23 THE COURT: Sustained.

24 Q. (By MR. REID) Did you attend the CTM meeting at the  
25 community?

26 A. Yes.

27 Q. And what -- what happened during that meeting?

28 A. Well, I went to several meetings, so I'm assuming

1 that if we talked to them that we -- with the executive  
2 director -- we had a plan in place, and that would have  
3 been at the building.

4 Q. Okay. Now, in your practice when you receive a memo  
5 like this, and you follow up the way you've described,  
6 would you, after you have the meeting, forget about it, or  
7 would there be more follow-up afterwards?

8 MS. CLEMENT: Leading.

9 THE COURT: Sustained.

10 Q. (By MR. REID) What would you do after the meeting  
11 and a plan was established?

12 A. Probably collaborate with our regional team and --  
13 we have conference calls with the communities weekly, so...

14 Q. What would happen if these complaints didn't get  
15 adequately addressed?

16 A. I'm sure they would call ethics first.

17 Q. Okay. And do you have any understanding whether at  
18 some point in time the problems addressed in this memo were  
19 solved?

20 A. I want to say they -- they were addressed. I mean,  
21 whoever was the ED at the time probably had a limit on  
22 staffing. But the med room, I'm sure Nicole -- we probably  
23 corrected some of the concerns and there were some we  
24 couldn't, at the quality services level.

25 Q. Okay. There's -- well, that's a good point.

26 I mean, within here there's quality services issues  
27 and there's other issues as well, true?

28 A. If they're talking about staffing, um, it would be

1 an operational concern.

2 Q. Okay.

3 A. But it also talks about MCM staffing. So it  
4 probably would have brought in the memory care, the  
5 national coordinator, I mean.

6 Q. Okay. I guess I'm trying to understand. As the --  
7 as the nurse responsible -- the regional nurse responsible  
8 for this community, would you follow up until the problems  
9 were solved, or would you -- would you just at some point  
10 in time give up, or something else?

11 A. We definitely -- I'd follow up with the -- with the  
12 concern, especially with the one who wrote it.

13 Q. Okay. And with the concern like this one at Rancho  
14 Solano we've been talking about, if the resident -- if you  
15 determined that the residents' needs are at risk or in  
16 jeopardy, what would you do?

17 A. We'll have to find out what the needs are and then  
18 figure out what interventions can be put in place based on  
19 that assessment process.

20 Q. Okay. And did it matter to you whether the needs of  
21 the residents were met?

22 A. If it entitled them to stay -- keeping them in the  
23 building, yes.

24 Q. Was it ever okay with you if residents' needs  
25 weren't being met?

26 A. No.

27 Q. If you could turn very briefly to Exhibit 272, which  
28 is the next one in order. We won't even -- it's been

1 admitted, but we won't even bring it up.

2 Just remind the jury what Exhibit 272 is.

3 A. This is a letter I sent to the executive director at  
4 Emerald Hills, letting her know the date we were going to  
5 do a community process review to evaluate the community and  
6 items that needed to be available --

7 Q. Okay.

8 A. -- for us to look at.

9 MR. REID: Actually, why don't we -- if it's okay  
10 with the Court, could we display that?

11 THE COURT: Sure.

12 MR. REID: Thank you, your Honor.

13 Exhibit 272. If you could pull up the top part, the  
14 date.

15 Q. (By MR. REID) The date of the letter is what?

16 A. 9/22 -- oh, I'm sorry -- 2008.

17 Q. All right. And it looks like on the bottom part of  
18 the letter there's a whole bullet point list of the areas  
19 that the CPR team would be looking at.

20 A. Yes.

21 MR. REID: Okay. Thank you.

22 Now, Exhibit 273 has been admitted into evidence.

23 Your Honor, I would ask permission to publish that  
24 to the jury.

25 THE COURT: Okay.

26 Q. (By MR. REID) And if -- if -- I'd like to -- well,  
27 when we follow an e-mail chain, we need to start at the  
28 bottom and work our way up, right? That's the way the

1 chronology of the e-mail chain works; is that correct?

2 A. Okay.

3 Q. Okay. So let's go to the last page, which is just a  
4 signature block.

5 A. Yes.

6 Q. So let's go to the third page. And on the bottom  
7 half of that page --

8 MR. REID: Could you bring that up, Miss Ford.

9 Q. (By MR. REID) That's an e-mail from Genevieve  
10 Bautista to you, correct?

11 A. Yes.

12 Q. Who is DFMN@AOL.COM?

13 A. That was my personal e-mail at that time.

14 Q. Why were you going to be meeting with Genevieve in  
15 May of 2008?

16 A. Well, starting in March, there were a series of, you  
17 know, getting acclimated to the company -- and Genevieve  
18 has been there I think one of the longest ones at that  
19 time -- to help me understand the processes that the  
20 quality services do within Emeritus.

21 Q. Okay. So on -- the first e-mail in this chain on  
22 May 3rd, 2008, at 10:04 p.m., directing your attention to  
23 the second line, what was Genevieve asking you to do in  
24 preparation for your meeting?

25 A. The second paragraph?

26 Q. Right.

27 A. Okay. Um, basically she wants me to make a list of  
28 questions that she'll try to answer. And to let her know

1 what -- what I want her to work on with me. And the  
2 attachments that she sent.

3 Q. All right. Now, if you can go up to the top of the  
4 page.

5 MR. REID: And actually we need to go to page two to  
6 get the time stamp. So if you wouldn't mind moving it to  
7 page two, Miss Ford.

8 Q. (By MR. REID) All right. So the next -- early the  
9 next morning, 12:23, on May 4th, did you write back to  
10 Ms. Bautista?

11 A. Yes.

12 Q. Okay. Now, turning to page three, with the text of  
13 the e-mail.

14 MR. REID: Could you bring that up, Miss Ford.

15 Q. (By MR. REID) All right. Miss Bautista had asked  
16 you for a list of your questions, right? We saw in the  
17 first e-mail?

18 A. Yes.

19 Q. And what are we looking at then in your response to  
20 Miss Bautista?

21 A. Letting her know that -- who is going to be picking  
22 her up at the airport. And, also, what airline she's  
23 coming in on.

24 Q. And then did you also tell her what you had on your  
25 agenda, the things you wanted to talk about?

26 A. Yes.

27 Q. And what did you tell her at that time was on your  
28 agenda, the things you wanted to talk about?



1 A. Um, I think -- it's a care log. And I think the  
2 name had changed. They used to call it "Jeopardy." But  
3 they're looking at semantics. About their move-outs at  
4 that time. We were tracking move-outs weekly.

5 Q. All right. What else was on your agenda of wanting  
6 to talk to Miss Bautista about?

7 A. Documentations for the RCDs. Utilizing Vigilant.

8 Q. Okay. Hold on one second.

9 "Documentation the RCDs have to maintain on file" --

10 A. Yes.

11 Q. -- what are you -- what does that mean?

12 A. What are the actual paperwork that is required to be  
13 kept on file for RCDs.

14 Q. Okay. And I hope I wasn't rude to you. I apologize  
15 if I was.

16 Then the next bullet point is what?

17 A. Utilizing Vigilant.

18 Q. All right. And we heard Vigilant, but could you  
19 explain to the jury what that is. What is Vigilant?

20 A. If I remember, it's like an assessment tool to --  
21 that the community can use to understand the level of care  
22 the resident coming in would be on, so that when they sit  
23 down with the family members -- they would have a care  
24 conference, and they can discuss that.

25 Q. Okay. Now, at that point in time, as you were  
26 getting started with -- with Emeritus, was -- was Vigilant  
27 being used through all the communities uniformly?

28 A. No.

1 Q. Okay. Was there -- did you have to deal with any  
2 challenges in trying to get Vigilant implemented in all the  
3 communities?

4 A. You know, I did. I think because some of the staff  
5 were just getting accustomed to it. And we had a turnover  
6 of people, so...

7 Q. Now, the next bullet point, what was the next thing  
8 you had on your agenda?

9 A. (Laughter.) "Roes" and expectations of the  
10 collaborative team management.

11 Q. I would guess there was supposed to be an "L" --

12 A. Yeah, I probably would say so.

13 Q. Okay. And then the next thing on the bullet point  
14 to talk about?

15 A. Expense account and reports.

16 Q. All right. And then probably more to come, I  
17 suppose, huh?

18 A. Oh, yes.

19 Q. Lots of questions.

20 Now then, turning forward to page -- well, can  
21 you -- where does Ms. Bautista's response to your e-mail,  
22 your Sunday e-mail where you listed out your questions --  
23 does that start at the very top of Exhibit 273?

24 A. Yes.

25 Q. Okay. So let's go all the way to the top. This  
26 is --

27 MR. REID: If you could pull up the block at the  
28 top, Miss Ford.

1 Q. (By MR. REID) So you sent your questions at Sunday,  
2 at -- just after midnight, May 4th. And then she wrote  
3 back about 9:30 the following evening to you, right?

4 A. Yes.

5 Q. All right.

6 MR. REID: Now, if you would pull back, Miss Ford.

7 Q. (By MR. REID) And then on the attachments it looks  
8 like -- what does this attachments line mean at the very  
9 top? She's sending you forms?

10 A. Yes.

11 Q. All right. And then we'll skip over the airline.

12 MR. REID: Could you pull up those next two  
13 paragraphs, please.

14 Q. (By MR. REID) So tell the jury then where -- what  
15 Miss Bautista stated in response to your initial questions.

16 A. Basically that -- she's reviewing the attachments  
17 that she sent to me and explaining them.

18 Q. Okay. And so the first one is something called a  
19 "CARE Log"?

20 A. Yes.

21 Q. All right. And what -- tell us -- tell the jury  
22 what she's communicating to you in that paragraph?

23 A. The care log, which was the at-jeopardy log, dealt  
24 with the criteria for each resident on this sheet. And  
25 this is something that the community would update --

26 Q. Okay.

27 A. -- weekly.

28 Q. I see.

1 A. And, also, that this had to be reviewed. So they  
2 would send the information, um, by the nurse in the  
3 community. And, also, their move-outs. Every week we had  
4 a conference on what's moving -- them moving out. Then the  
5 calls. And how do we close the back door.

6 Q. Okay.

7 A. And it also explains that the RCD, which is the  
8 resident care director, the nurse in the community, would  
9 get a copy of what we call a MIMO, which is a move-in and  
10 move-out. And these move-ins and move-outs they would get  
11 from the sales and marketing person so that they would  
12 be -- we can have a more accurate report by the end of the  
13 month so we'll know how many vacancies that there may be.

14 Q. And she would use that information for a weekly  
15 conference call with the community?

16 A. Well, not only with the community, this weekly  
17 conference call, with the CTM and, also, every Friday with  
18 the divisional team and the executive team.

19 The move-out analysis report worksheet that she's  
20 talking about, at that time, it was due at the end of  
21 the -- this is something we had to discuss with -- us, but  
22 we'll discuss every weekly call we have for each community,  
23 how many move-ins and how many move-outs they have.

24 Q. Gotcha. Okay.

25 MR. REID: Could you pull up the next paragraph.

26 Q. (By MR. REID) The next paragraph in the -- is that  
27 another answer to one of the questions you posed to  
28 Ms. Bautista?

1 A. The highlights. Well, I don't know if I posed it or  
2 she gave it to me.

3 Q. You had indicated that you wanted information of  
4 documentation the RCDs have to maintain on file and turn  
5 in.

6 Is this here where she's trying to address that  
7 question?

8 A. Yes.

9 Q. All right.

10 A. Yes.

11 Q. And in the interest of time, let's just go to the  
12 next paragraph.

13 Then in the next paragraph, what's -- what's  
14 Miss Bautista doing there?

15 A. Well, in order to -- for the -- for me to be able to  
16 access Vigilant, the assessment tool used in every  
17 community, I have to get on it and learn it.

18 Q. Okay.

19 A. So I needed to -- you know, she was making sure that  
20 when she came to train me that I would have access to it.

21 Q. All right. Then the next paragraph down, what -- is  
22 this another response to one of the questions that you  
23 posed?

24 A. Yes.

25 Q. I think that was the question missing the "L."

26 A. There you go.

27 Q. Okay. Now -- but let's look at that.

28 MR. REID: Could you pull up the rest of the

1 document, the last part of the document, please, Miss Ford.  
2 The whole thing.

3 Q. (By MR. REID) Okay. So she's giving you  
4 information about the collaborative team management. And  
5 then she says she can give you examples.

6 What did she tell you after she said, "I can give  
7 you examples"?

8 A. She wrote?

9 Q. Yeah.

10 A. We do a team visit in our communities.

11 Q. And what did she say after that?

12 A. "One of the new initiatives" --

13 Q. No, no. Hold on. I'm sorry. I apologize.

14 Right after where it says, "We do a team visit in  
15 the community," she says, "see below" in parenthesis,  
16 right?

17 A. Yes.

18 Q. And then the next part is in a different type face,  
19 isn't it?

20 A. Yes.

21 Q. Okay. And what did you understand this next section  
22 of the e-mail to be telling you?

23 A. Basically that, um -- what they do, I think, in  
24 Region Three, if that's what she -- with these three names.  
25 This is how their team does their collaborative team  
26 management, if someone were to go into a community.

27 MR. REID: All right. And then if you could, go to  
28 the next page, please.

1 Q. (By MR. REID) And this list of topics in the same  
2 type face, is that -- is Miss Bautista telling you that --  
3 the topics that she with her collaborative team address  
4 with each community when they go visit?

5 A. Yes.

6 Q. Did you understand Miss Bautista to be implying any  
7 ranking of priorities of any of those topics?

8 A. Yes.

9 Q. How did you -- how did you have that impression?

10 A. Well, because when I started, I didn't have an RDO.  
11 So she was giving me a guideline that is utilized already  
12 in a community, in a region. And that's been a round for a  
13 while. So, yes, that's how I took it, because it works for  
14 them.

15 Q. So you would go through all those topics when you  
16 started to implement this system? Or did you use this  
17 system? I don't know.

18 A. Originally when I started, I didn't have an RDO.

19 Q. Right.

20 A. So the RDO with me was a VPO. So she really guided  
21 a lot of the process. And this is the same process they  
22 use in every region, so there's no sense in me changing it.

23 Q. So when we look at this list that's on page one and  
24 two, sales, occupancy, back door, staffing OT, care, HR,  
25 barriers, Workers' Comp, financials, EBITDARM, etcetera, is  
26 that addressing all of the three portions of the  
27 collaborative team?

28 A. Yes.

1 Q. Okay. And as the quality -- as the person  
2 responsible for quality services, which of these on this  
3 list was your priority?

4 A. Several.

5 Q. Okay. Which were they?

6 A. Occupancy, because that dealt with closing the back  
7 door and also assisting with move-ins. Where it says --  
8 the third one down, "back door," would be quality services  
9 because we're supposed to close that. The second page, the  
10 third bullet down, where it says "care," um -- and under  
11 "care," two down, where it says "barriers."

12 Q. So those were the -- those were your priorities in  
13 this collaborative team approach?

14 A. The only thing I could say was interdependent. This  
15 was one of the -- we all had to make, um -- talk about it.  
16 That's why they called it "collaborative." And this is an  
17 area that we all focused on. Because it kind of crossed  
18 over. So occupancy would be sales and marketing and, also,  
19 it would deal with operations and quality services. So  
20 they were kind of interdependent.

21 Q. Thank you.

22 Turning your attention now to Exhibit 274, the next  
23 one in order that you brought yesterday.

24 MR. REID: That's been admitted into evidence, your  
25 Honor. May I display that?

26 THE COURT: Okay.

27 Q. (By MR. REID) You described this, I think, as the  
28 practice that the communities were supposed to follow when



1 a request was made for medical -- or for the chart from the  
2 community.

3 A. Yes.

4 Q. And in the course of your employment with Emeritus,  
5 before you separated, you had some involvement in -- or did  
6 you have some involvement in helping Emeritus try to find  
7 documents to respond to requests from Miss Clement's  
8 office?

9 A. Yes.

10 Q. And in the -- in that process, did you come to learn  
11 that there was some concerns about how closed files were  
12 being kept, particularly at Emerald Hills?

13 A. I'm sorry. How closed files?

14 Q. Right. In other words, files of people that weren't  
15 living there any more.

16 A. Oh, yes.

17 Q. Okay. What did you find out?

18 A. I think they could have -- um, organizational skills  
19 could have been better with the files.

20 Q. Did you come to find -- well, were the files being  
21 kept in a -- so that each resident's -- all of each  
22 resident's records were right in one folder?

23 MS. CLEMENT: Leading.

24 THE COURT: Sustained.

25 Q. (By MR. REID) Did you -- what did you find when you  
26 came to look for records related to Mrs. Boice?

27 A. That she had records.

28 Q. Okay. Was there one file that said "Joan Boice"?

1 A. Yes.

2 Q. Okay. And did you -- was there ever a time when you  
3 had to go searching for other records related to Joan  
4 Boice?

5 A. Yes.

6 Q. Okay. Tell the jury about that.

7 A. Emeritus has a -- I don't know if it's a warehouse  
8 or a storage space where they keep records of residents  
9 that moved out or passed. And, also, inside the community.  
10 You know, we looked through cabinets, looked through other  
11 places for records, too.

12 Q. Okay. So did you ever come across any circumstances  
13 where different residents' records were intermingled?

14 A. Yes.

15 Q. And when someone requests records from the  
16 community, was there -- did you have an understanding as to  
17 any need for the community to make sure that they gave all  
18 the records related to the particular resident and  
19 excluding records that didn't relate to the resident?

20 MS. CLEMENT: Leading.

21 THE COURT: Sustained.

22 Can we get the lights, please.

23 MS. CLEMENT: Thanks, Judge.

24 Q. (By MR. REID) Is the community allowed to give  
25 records for residents other than the person who is the  
26 subject of the request?

27 A. That's HIPPA violation.

28 Q. Okay. All right. So did you have an understanding

1 of what role was being played in Seattle when going through  
2 these records after they're gathered together and sent up?

3 MS. CLEMENT: It's vague.

4 THE COURT: She can answer.

5 MS. CLEMENT: My only concern, your Honor, is -- is  
6 it related to Mrs. Boice or just in general?

7 THE COURT: What is your question specifically?

8 Q. (By MR. REID) In general, did you have an  
9 understanding of what the role was of the folks up in  
10 Seattle once they got this collection of records that the  
11 community put together?

12 A. That they would be reviewed.

13 Q. Okay. For what?

14 A. Basically, um, potentials for litigations. Um,  
15 also, if there's -- if the records were complete.

16 Q. Okay. Would HIPPA be a concern?

17 MS. CLEMENT: Objection; it's vague and leading.

18 THE COURT: Sustained.

19 Q. (By MR. REID) You mentioned HIPPA. What -- can you  
20 tell the jury what HIPPA is.

21 A. Overall, it's patient confidentiality.

22 Q. All right. The next in order is Exhibit 275 of the  
23 documents you brought.

24 MR. REID: My notes fail me, your Honor. I'm not  
25 sure if 275 has been admitted. May I inquire?

26 THE COURT: It has not.

27 MR. REID: All right. Thank you.

28 **(Joint Exhibit Number 275 was marked for**

1     **identification.)**

2     Q.        (By MR. REID)   What is Exhibit 275?

3     A.        An e-mail sent from Nicole Jackson, on January 21st  
4     of 2009, to actually two communities, Roseville Gardens and  
5     Citrus Heights. Kim Moes worked in both places, so this  
6     was -- should be to her.

7     Q.        Okay. And you're also copied on the e-mail?

8     A.        Yes, along with the executive directors of the two  
9     communities.

10    Q.        Okay. And did you receive this e-mail in your  
11    ordinary course of operations with Emeritus?

12    A.        Well, 24/7. So, yes.

13               MS. CLEMENT: I have no objection to moving this in.

14               MR. REID: Okay. Awesome.

15               Move it into evidence, your Honor.

16               THE COURT: All right. 275 is admitted.

17               **(Joint Exhibit Number 275 was received into**  
18    **evidence.)**

19               MR. REID: Thank you.

20               May I display it?

21               THE COURT: Yes.

22    Q.        (By MR. REID)   What is Nicole -- what is the purpose  
23    of the e-mail? What is going to be happening?

24    A.        I know she sent attachments regarding a list of  
25    interventions we can give to the community as a resource to  
26    help their falls. Also, a template about blood pressure  
27    monitoring. A letter for -- injection letter template;  
28    insulin injection template; site visit action plans; site

1 visit checklist; time management presentations; a copy  
2 of -- a copy of a RCD action guidelines.

3 Q. Okay. And was there going to be a webinar that was  
4 going to take place that the people on the e-mail were to  
5 attend?

6 A. Yes. It's a YGL, "You Got Leads" webinar. And  
7 that's like a sales and marketing tool.

8 Q. Okay. So if you could, let's go down to the bottom  
9 half of the page where it says "Kim and Jeanine."

10 A. Kim and Jeanine. Okay.

11 Q. And the first bullet point --

12 A. Okay.

13 Q. -- on the agenda is what?

14 A. "The Emeritus vision as well as the regional and  
15 divisional goal is to help meet that vision." (As read.)

16 Q. Okay. Do you remember what the vision was?

17 A. I don't know if it's "Our Family's Committed to  
18 Yours" or the other one. I can't recall.

19 Q. Okay. What -- what was the topic of the other one  
20 that you're thinking of?

21 A. It was more to it. It was the "Family Commit to  
22 Yours" and there was more to it. I --

23 Q. All right.

24 A. I don't know.

25 Q. Now -- so on the agenda, "Specific instruction on  
26 how you the RCD and WC" -- wellness coordinator?

27 A. Yes.

28 Q. -- "can institute an action plan to help your

1 community and region meet the divisional goals."

2 Right?

3 A. Yes.

4 Q. Okay. And so what was -- what was Nicole going to  
5 cover in this webinar in terms of meeting the divisional  
6 goals?

7 A. Marketing.

8 Q. Okay. The first one was internal marketing?

9 A. Yes.

10 Q. And what did -- what did that mean?

11 A. Training your staff regarding professionalism,  
12 customer service, and confidentiality.

13 Q. Okay. And how would -- if you have an  
14 understanding, how would the staff being aware of and  
15 attentive to professionalism, customer service, and  
16 confidentiality assist in marketing?

17 A. Well, when you come into a building, you want to  
18 have people greet you. You know, smile at you, make you  
19 feel really comfortable in the community. And that  
20 helps -- leads into sales and marketing, because it's all  
21 interdependent.

22 Professionalism. You know, they started instituting  
23 name badges and dress so that it can seem more  
24 professional.

25 Q. Okay.

26 A. And confidentiality. You know, not talking in the  
27 elevators, hallway, things in that sense.

28 Q. Gotcha.

1           The next bullet point is: External marketing.

2       As you visit residents in the acute or SNF setting, take  
3       marketing materials to share with the discharge planners,  
4       social workers and nurses.

5           So what does that mean, "as you visit residents in  
6       the acute or the SNF"?

7       A.       So I think at this time the wellness coordinator or  
8       RCD had to do home visits. They had to go out and meet  
9       discharge planners, help not only get Emeritus out there  
10      but also to get clientele, in that sense. So they would  
11      have to take literature with them. They'd have to do a  
12      certain amount of these visits per week.

13      Q.       Okay. Now, it says, "as you visit residents in the  
14      acute or SNF setting."

15           Was there expectation that either the resident care  
16      director or a wellness coordinator, or somebody from the  
17      community would go and visit current residents if they were  
18      discharged out to a hospital or a skilled nursing facility?

19      A.       Yes.

20      Q.       And then when they go, take marketing materials and  
21      get to know the discharge people? Is that what that's  
22      about?

23      A.       Yes, that's...

24      Q.       And then -- and then the last one, "External  
25      marketing." "Arrange with your CRD" -- what's that?

26      A.       That's the sales and marketer in the community  
27      called a community relations director.

28      Q.       Okay.

1 A. I think.

2 Q. Now -- and this talks about accompanying the  
3 community relations director out on a visit in the  
4 community once a week, right?

5 A. At least, yes.

6 Q. Okay. And what role would a nurse play in a meeting  
7 like this, when the community relations director is meeting  
8 with somebody out in the community?

9 A. It's great for advertising to know that you have a  
10 nurse to go with you, to accompany you when you go try to  
11 market people.

12 Q. Were the nurses instructed to talk about what kind  
13 of services would be provided?

14 A. That's one of the things they talked to them about,  
15 yes.

16 Q. Okay. And would -- who would have a better  
17 understanding of the type of services that -- care services  
18 that are provided in a community? Would it be the resident  
19 care director -- I mean, the community relations director  
20 or the resident care director?

21 A. The whole collaborative team should know; the ED,  
22 the sales and marketer, and the wellness coordinator or the  
23 RCD.

24 Q. Okay. And if there was a question -- somebody out  
25 in the community had a question, *Well, can you guys do*  
26 *this*, concerning care, who would be more knowledgeable to  
27 answer the question, the community relations director or  
28 the resident care director?



1 A. Out of those two?

2 Q. Mm-hmm.

3 A. Just the resident care director.

4 Q. Okay.

5 A. But we definitely wanted the sales and marketer to  
6 be knowledgeable, just in case she was alone.

7 Q. Sure.

8 The next section is the "Keep the Back Door Shut."  
9 We've heard a lot about that.

10 "Manage move-outs by" -- and the first bullet point,  
11 "Speaking to residents at risk for move out to determine is  
12 there some intervention the community can institute to  
13 prevent the move."

14 What does that mean?

15 A. To put systems in place to keep the resident.

16 So if a resident was on assisted living even, then  
17 they needed -- memory care, we can move them over to the  
18 Memory Care Unit. Or if they had to move out of state, we  
19 can find another Emeritus community. We could show them  
20 the difference between a board and care and Emeritus  
21 price-wise or --

22 Q. Okay. Does that -- does this mean that the resident  
23 care director should not allow a resident who isn't  
24 appropriate for the community to not leave the community?

25 MS. CLEMENT: Leading.

26 THE COURT: Sustained.

27 We're at the lunch hour at this point.

28 Ladies and gentlemen, leave your notebooks on the

1 chairs. Remember the admonitions. I'll see you back at  
2 1:30.

3 If counsel could stay for one moment, please.

4 Miss Marshall, we'll see you back at 1:30.

5 THE WITNESS: Thank you.

6 THE COURT: Thank you.

7 **(The following proceedings were then had in open**  
8 **court, outside the presence of the jury.)**

9 THE COURT: All right. I just wanted to put on the  
10 record what we had our little discussion about in chambers.  
11 Apparently, a few documents that Miss Clement pointed out  
12 earlier, which were not received in discovery, and which  
13 she had indicated to me might contain attorney-client  
14 matter on them.

15 After my discussions in chambers with counsel, it  
16 appeared to me that the documents were dealing with  
17 attorneys or legal staff seeking the help of Miss Marshall  
18 to obtain additional documents for production in the case,  
19 and that the client being Emeritus, should they choose to  
20 want to waive any type of privilege with respect to this,  
21 or work product, could do so, recognizing that if they do  
22 choose to do that, I don't know where that will lead in  
23 terms of opening the door to other arguable attorney-client  
24 or work-product-type information.

25 There was also some discussion about whether or not  
26 these were the kinds of documents which should or should  
27 not have been disclosed in discovery. And my general  
28 impression after discussing it with counsel was that this

1 is not the type of document that would arguably be produced  
2 in response to a discovery request. It was internal  
3 communication seeking the help of employees to provide  
4 documentation to respond.

5 But, Miss Clement, is there anything additional you  
6 wish to put on the record at this time?

7 MS. CLEMENT: No, your Honor. Just that I did raise  
8 the fact that, you know, these documents -- responsive --  
9 requests were made that documents -- that would include  
10 documents such as Exhibits 5028, 5029 and 5031, and that  
11 objections were made on the basis of attorney-client  
12 privilege. I was just handed these this morning. So off  
13 the cuff, I'm not able to, you know, grab those. But I'll  
14 do more research into that.

15 And I also wanted to make a record that I did raise  
16 in our discussion in chambers; that, of course, the  
17 plaintiffs' counsel has no way to know if these are all the  
18 documents that were generated because these are only a few  
19 that were being handed to us. But I do feel that it was  
20 important that we make this record and that defense counsel  
21 has now opened the door for us to go into these type of  
22 communications.

23 THE COURT: All right. Without looking at the  
24 requests that you are referencing for documents, I, of  
25 course, cannot make any rulings on them. Should you find a  
26 request later on in your research that you think arguably  
27 these documents could have or should have been disclosed  
28 pertaining to, you can raise that with me at that time.

1           Is there anything, Mr. Reid, you wish to put on the  
2     record?

3           MR. REID: No, your Honor. I think you accurately  
4     described the conversation.

5           THE COURT: Okay.

6           MS. CLEMENT: I just want to let the Court know  
7     about a potential problem.

8           Yesterday, I asked the length of time that Mr. Reid  
9     expected with this witness. And he said, you know, he'd be  
10    done in the morning, probably an hour. And we have another  
11    witness waiting out there, a Miss Cordova, with her  
12    attorney. And I will just let the Court know that this --  
13    our experience on both sides has been it's been very  
14    difficult to get Nancy Cordova -- we can only talk through  
15    her attorney here. And he was emphatic that she is only  
16    coming the one day, etcetera, etcetera.

17          So I just want to alert the Court to we're going to  
18    have this problem. He also was under the impression that  
19    he was going to get to make objections during the trial. I  
20    just wanted to alert the Court to that as well. And if we  
21    could get some help -- obviously, we're not going to finish  
22    Ms. --

23          THE COURT: Marshall.

24          MS. CLEMENT: -- Marshall in 15 minutes or  
25    something. That guy, he's been waiting out there from  
26    San Francisco. And if we could have an estimate of time to  
27    tell him, because he's going to jump me as soon as I walk  
28    out the door. And if we could get some help from you, your

1 Honor, please, about if we don't finish that she would have  
2 to come back tomorrow.

3 THE COURT: I don't think that latter issue is  
4 something you need to be concerned about. The attorney  
5 doesn't get to control when a witness who has been -- I  
6 assume she's been subpoenaed.

7 MS. CLEMENT: Yes, your Honor.

8 THE COURT: Okay. So we'll deal with that.

9 As to whether or not he gets to make objections, we  
10 all need to be back here then at, say, 1:20 or 1:25, so  
11 that he can introduce himself to me --

12 MS. CLEMENT: Okay.

13 THE COURT: -- outside the presence of the jury and  
14 I can instruct him on the role that he would be permitted  
15 to play during the course of this trial, if any. And we  
16 can talk more about that.

17 Now, we've got to pick up the pace. We've got  
18 certain time constraints here that we're dealing with all  
19 the way around.

20 So may I ask, how much longer with this witness as  
21 far as you're concerned?

22 MR. REID: I don't think it will be more than --  
23 much more than an hour. Probably less.

24 THE COURT: An hour. All right.

25 And then we have to go back to Miss Clement. And  
26 then we have to go to the jury.

27 Okay. You know, Miss Clement --

28 MS. CLEMENT: Yes.

1           THE COURT:  -- your witness.  You call her.  He gets  
2   to ask what he needs to ask.

3           I just will remind you of the time constraints of  
4   how long you all estimated this trial was going to last.  
5   Don't be surprised when we get close to the end if I start  
6   telling you you only have a certain amount of time left and  
7   you got to get it done within that period of time.

8           MR. REID:  Yes, your Honor.

9           THE COURT:  We're in recess.

10          MS. CLEMENT:  Thank you, Judge.

11          (Lunch recess.)

12          (Change of reporters.)

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1 TUESDAY, JANUARY 15, 2013

2 AFTERNOON SESSION

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4 The matter of JOAN BOICE, by and through her  
5 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE  
6 BOICE, and MARK BOICE, individually, Plaintiffs, versus  
7 EMERITUS CORPORATION dba EMERITUS AT EMERALD HILLS,  
8 Defendant, Case Number 34-2009-00063714, came on regularly  
9 this day before Honorable JUDY HOLZER HERSHER, Judge of the  
10 Superior Court of California, for the County of Sacramento,  
11 Department 45.

12 The Plaintiffs, JOAN BOICE, by and through her  
13 Successor-in-Interest, ERIC BOICE, and ERIC BOICE, NANCEE  
14 BOICE and MARK BOICE, were represented by LESLIE A. CLEMENT,  
15 Attorney at Law; VALERIE DAWSON, Attorney at Law; ASHLEY  
16 BAIRD, Attorney at Law; and SEAN LAIRD, Attorney at Law.

17 The Plaintiffs, ERIC BOICE, NANCEE BOICE and MARK  
18 BOICE were present.

19 The Defendant, EMERITUS CORPORATION dba EMERITUS AT  
20 EMERALD HILLS, was represented by BRYAN R. REID, Attorney at  
21 Law; RIMA BADAWIYA, Attorney at Law; and KIM M. WELLS,  
22 Attorney at Law.

23 Also present on behalf of the Defendant, EMERITUS  
24 CORPORATION dba EMERITUS AT EMERALD HILLS, was JANET E.  
25 McKINNON, Vice President of Legal Affairs; and LISA HULSE,  
26 Vice President Quality & Risk Management.

27 Also present on behalf of Witness Nancy Cordova, JOSE  
28 CORDOVA, Attorney at Law, State of California.

1           **(The following proceedings were then had in open court,**  
2                       **outside the presence of the jury.)**

3           COURT ATTENDANT: All rise. Department 45 is in  
4 session. The honorable Judge Judy Hersher now presiding.  
5 You may be seated.

6           THE COURT: All right. Is the attorney here for the  
7 next witness?

8           MS. CLEMENT: Can -- shall I go in the hall and look  
9 for him?

10          THE COURT: Yes.

11          Did he know he was supposed to be here?

12          MS. CLEMENT: Yes, your Honor.

13          THE CLERK: They are down the hall.

14          We need two cards, please.

15          THE COURT: All right. Ms. Clement, your next  
16 witness, after we finish with the current witness, is going  
17 to be whom?

18          MS. CLEMENT: Nancy Cordova, your Honor, the executive  
19 director.

20          THE COURT: Okay. And apparently there is someone  
21 here who is counsel for Ms. Cordova; is that correct?

22          THE WITNESS: Yes, your Honor. Jose Cordova.

23          THE COURT: Jose what?

24          THE WITNESS: Cordova.

25          THE COURT: Could you spell your last name, please?

26          THE WITNESS: C-o-r-d-o-v-a.

27          THE COURT: Okay. Um, Mr. Cordova, um, in what  
28 capacity are you here for, um, Nancy Cordova?



1 THE WITNESS: As her attorney, your Honor.

2 THE COURT: All right. You have the same last name as  
3 she has?

4 THE WITNESS: That is correct, your Honor.

5 THE COURT: Are you related to her?

6 THE WITNESS: By blood, your Honor?

7 THE COURT: Yes.

8 THE WITNESS: No.

9 THE COURT: Okay. Just asking because of the same  
10 last name.

11 So, um, what role do you seek to have in this case?

12 THE WITNESS: Your Honor, I'm her attorney. Um, she  
13 had -- she has a right to be represented by her attorney.  
14 Um, I helped her prepare.

15 THE COURT: You helped her prepare for her testimony,  
16 okay.

17 Well, are you anticipating that there will be any  
18 attorney-client privileged information that may be solicited  
19 from her?

20 THE WITNESS: I -- I -- I don't know at this time,  
21 your Honor.

22 THE COURT: Okay. So other than helping her prepare,  
23 um, and obviously being here while she is testifying, um,  
24 I -- I don't necessarily see any particular role for you in  
25 this trial, so I'm trying to understand what you anticipate.

26 THE WITNESS: I am here awaiting instruction from you,  
27 your Honor. If I was allowed to make objections, I would  
28 make objections. If I'm not allowed to make objections, I

1 will sit here and wait.

2 THE COURT: Well, objections in the sense of what, to  
3 the form of the question; is that what you mean by  
4 "objections"?

5 THE WITNESS: Or getting back to what you stated in  
6 terms of potential privilege.

7 THE COURT: Okay. Well, clearly if you believe -- and  
8 I don't know anything about this witness. I don't know what  
9 may or may not be going on vis-a-vis this witness. But if a  
10 question is posed during the course of the trial which you  
11 believe may implicate an attorney-client privilege, then  
12 would you please stand and, um, say you wish to address the  
13 Court and that way I can take that up outside the presence  
14 of the jury at that time?

15 Objections as to the form of the question per se, I  
16 think I'm going to leave to, um, the two sides in this case,  
17 but you can tell your client that at any time if she feels  
18 she needs to consult with you at any reason, she should just  
19 simply turn to me and say, I wish to consult with my  
20 attorney. We will talk about that at that point. Okay?

21 THE WITNESS: Okay.

22 THE COURT: All right. I'm not exactly sure when she  
23 is going to be up, meaning that we still have to finish with  
24 the current witness that we have on the stand. So I assume  
25 you're waiting with her out in the hallway; is that correct?

26 THE WITNESS: That is correct, your Honor.

27 THE COURT: Okay. Then we will come get you as soon  
28 as we can.

1           THE WITNESS: One more thing. You asked about the  
2 relationship. We are not blood relatives; is that a  
3 sufficient answer for you or --

4           THE COURT: Is there something else you need to tell  
5 me?

6           THE WITNESS: We are not blood relatives, no.

7           THE COURT: Well, that is all I needed then. In other  
8 words, um, because of the same last name I just wanted to  
9 know what the relationship, if any, was between the two of  
10 you and apparently not, you just said the same last name.

11          THE WITNESS: She is my sister-in-law.

12          THE COURT: She is your sister-in-law. Okay. All  
13 right. Thank you.

14          And just so you understand why I asked that question,  
15 for example, if you were husband and wife and you wanted to  
16 interpose an objection regarding any information based on  
17 the marital privilege, I would then know you were the  
18 spouse. Apparently you're not the spouse, so I don't have  
19 to worry about any marital privileges, okay.

20          THE WITNESS: Thank you, your Honor.

21          THE COURT: All right. Thank you. We will talk to  
22 you a little later.

23          THE WITNESS: May I be dismissed?

24          THE COURT: Oh, yes. Thank you.

25          Okay. Terrance, can we please bring in Ms. Marshall  
26 and get her on the stand?

27          And we have all had coffee and we are wide awake and  
28 we are going to move with alacrity, right?

1 MS. CLEMENT: We did agree upon and get the redacted  
2 Exhibit 270. I gave that to Alicia.

3 THE COURT: Okay. And you have both looked at it and  
4 you're comfortable with it?

5 MR. REID: I -- I will defer to Counsel that she has  
6 redacted the name. I haven't had a chance to look through  
7 it. I'm sure it's fine. I will look at it as quickly as I  
8 can.

9 THE COURT: Okay. Maybe your co-counsel can do that  
10 while you're doing your questioning.

11 MR. REID: That is a good idea.

12 THE COURT: Please bring the jury in.

13 Welcome back.

14 THE WITNESS: Thank you.

15 **(The following proceedings were then had in open court, in**  
16 **the presence of the jury.)**

17 COURT ATTENDANT: Please come to order. Department 45  
18 is once again in session.

19 THE COURT: All right. Please continue, Mr. Reid.

20 MR. REID: Thank you, your Honor.

21 Good afternoon, ladies and gentlemen.

22 CONTINUED TESTIMONY OF

23 DORIS MARSHALL, Witness called under Evidence Code 776 on  
24 behalf of the Plaintiffs,

25 RESUMED REDIRECT EXAMINATION

26 By BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
27 Defendants:

28 Q Hi, Ms. Marshall.

1 A Hi.

2 Q Did you get a chance to confer with Ms. Clement during  
3 the lunch break?

4 A Yes.

5 Q Did you talk about your testimony in the case at all?

6 A Yes.

7 Q Did you look at any documents, um, during the lunch  
8 break?

9 A Yes.

10 Q Where did you do that?

11 A Where?

12 Q Where did you do that?

13 A At her office.

14 Q Okay. Before, um, lunch I was going through the  
15 documents that you brought to, um, to court yesterday. Did  
16 you bring any additional documents since the lunch break?

17 A No --

18 Q Okay.

19 A -- sir.

20 Q If we can put Exhibit 275 up?

21 I had a cup of coffee, so we will get going, okay.

22 All right.

23 I just wanted to -- so in Exhibit 275 we were talking  
24 about, um, the "close the back door" section. You went  
25 through the first bullet point I think and then the second  
26 bullet point, "notify your RDQS with the name, contact  
27 person and phone number and reason why for all of the  
28 potential move-outs", and then it says, "even if financial

1 so she can determine it isn't truly a QS concern causing the  
2 move." What does that mean?

3 A Actually it's collaborate with the team to find out --  
4 the regional team and the community team -- what is their  
5 financial status, if that is a reason for them to move out.

6 Q Okay. They might be saying it's a financial reason  
7 but it might really be a quality issue that might -- you  
8 could address?

9 MS. CLEMENT: Leading.

10 THE COURT: Sustained.

11 MR. REID: I will strike -- withdrawn.

12 Q (By MR. REID) When, um -- has there been -- have you  
13 had experience people said they were leaving for financial  
14 reasons but there was other reasons that they were actually  
15 moving?

16 A Yes.

17 Q Okay. And, um, in order to do your job in ensuring  
18 quality at the communities, why would you want to know if  
19 there is other reasons other than financial?

20 A Well, based on, um, Emeritus is that -- let's say they  
21 say it's financial and they are moving out of state, maybe  
22 we can find a Emeritus community they can move into, um, or  
23 if it's a dining services concern, then we can relate it  
24 to -- or see what their actual concern would be.

25 Q Okay. Um, and then the next bullet point is, um,  
26 "update the YGL daily, um, with interventions to prevent the  
27 move." What does that mean?

28 A YGL is a sales and marketing tool, "you've got leads"

1 and, um, actually they have hot leads, cold leads, and I  
2 think something called a warm lead.

3 Q Okay.

4 A So anything that is hot then I need to -- the  
5 community needs to put in, um, interventions to decrease  
6 those barriers or if they can't come up with it to call me  
7 and see what I can do.

8 Q Okay. Are you -- what -- what is your role in that,  
9 are you, um -- what is your role in that?

10 A In "closing the back door"?

11 Q Well, with regard to, you know, being contacted  
12 regarding leads, what would your role be?

13 A Every day there is a understanding in the  
14 community --

15 COURT REPORTER: Every day there is a understanding  
16 in...

17 THE WITNESS: Oh. Every day there is a meeting within  
18 the community that part of "you've got leads" is discussed.  
19 So if there is a barrier to their moving in, like, you know,  
20 602 or things related to them moving in, we have to think of  
21 barriers to decrease that.

22 Q (By MR. REID) Okay. Now, the next bullet point is  
23 "follow-up, um, for the first 30 days." I guess after  
24 someone moves in, is that what that's talking about?

25 A Yes.

26 Q And, um, on page 2, why -- if you can pull that up,  
27 Ms. Ford?

28 Why -- why would you -- why would the quality people

1 be following up with a resident after -- during that first  
2 month after they move in?

3 A That's another tool to use to let the residents know  
4 that, you know, we are thinking about them, you know, we are  
5 coming to see how they are doing, how's their move-in,  
6 any -- how is your medications coming along, as far as their  
7 relationship to any med management if they have it, for  
8 several things.

9 Q "To be sure they are not dealing with poor  
10 satisfaction early on", what does that mean?

11 A In relation to quality services?

12 Q Right.

13 A If they are -- whatever their level of care is, if  
14 they are getting that met.

15 Q The next one is "contribute to revenue per unit  
16 through timely, up-to-date and accurate assessments." How  
17 does -- how does the last part of that sentence relate to  
18 the first -- timely, up-to-date and accurate assessments  
19 relate to revenue per unit?

20 A If I remember right, they want residents when they  
21 came in per unit, the beds, units. Um, let's say that their  
22 Vigilant assessment when they came in didn't need as much or  
23 it had more, then we can do a 30-day assess -- reassessment  
24 to see if we are still at the same admission assessment.

25 Q Okay. With regard to the goal in terms of the  
26 assessment matching the charge, is there a goal, or the  
27 level of care, the assessment matching the level of care, is  
28 there a goal in that?



1 A That they meet each other. That's -- they should --  
2 the level of care that they get would be based on how much  
3 they pay.

4 Q Okay. So what's the goal then?

5 A That they pay for what they are getting.

6 Q Okay. And as the vice president of quality, were  
7 you -- was there ever a time that you were aware of where,  
8 um, residents were being given discounts to move in and so  
9 they were getting more care than they were being charged?

10 MS. CLEMENT: Objection, it's compound, it's also  
11 leading.

12 THE COURT: Sustained.

13 Q (By MR. REID) Um, did you -- was there ever a time  
14 that you became aware, um, of any residents whose -- whose  
15 charges weren't matching the care they were receiving?

16 A Oh, yes.

17 Q Okay. And so in terms of this section, "through  
18 timely, up-to-date and accurate assessments", how would that  
19 relate to a resident who might not be -- who might be  
20 getting more services than they are being charged for?

21 MS. CLEMENT: Object to the question, it's leading  
22 again.

23 THE COURT: She can answer.

24 THE WITNESS: I'm sorry, can you repeat that?

25 MR. REID: I wonder if I can ask the Court to have the  
26 question read back.

27 THE COURT: Go ahead.

28 (Whereupon the last question was read back as requested.)

1           THE WITNESS: To move someone in a community, and  
2 let's say we know that this person, um, I would say, needed,  
3 um, assistance with, um, ambulation or med management and,  
4 you know, they didn't really, um -- we are seeing if that --  
5 if they need that because maybe the family members told us  
6 that they need help with their medications and we find out  
7 that at the time that we first assessed them they may but  
8 they graduated down, if I got the question complete.

9           Q        (By MR. REID) Okay. That wasn't a very good question  
10 but it was a very good answer. Thank you.

11           To your understanding, um, did you train the care  
12 staff to know how much residents were being charged for  
13 their care?

14           A        No.

15           Q        What did you tell the care staff with regard to, um,  
16 meeting the needs of the residents?

17           MS. CLEMENT: Objection, it's vague.

18           THE COURT: Sustained.

19           Q        (By MR. REID) What -- what instruction or training  
20 would you give to the care staff about meeting the needs of  
21 the residents?

22           MS. CLEMENT: It's still vague, your Honor, overbroad.

23           THE COURT: It's compound, it's vague. Let's get  
24 specific, please, Counsel.

25           MR. REID: Yes, your Honor.

26           Q        (By MR. REID) Did you, as the vice -- as the regional  
27 director of quality services, would you have communications  
28 with the care staff in which you would talk to them about

1 meeting the needs of the residents?

2 A Yes.

3 Q Okay. And what would you instruct them?

4 A In every community there is, um, a book, like the  
5 residents' assessment that they have access to to look at,  
6 to see what they do, what their level of care is for that  
7 resident. So they were able to know and keep abreast of the  
8 residents that they are assigned to.

9 Q Okay. Was there ever a circumstance where, um, a  
10 resident had needs that weren't in the book?

11 MS. CLEMENT: Objection, your Honor, vague.

12 THE COURT: Would Counsel approach, please?

13 (Sidebar conference was held.)

14 MR. REID: Would it be okay, your Honor, if I had the  
15 last answer read back?

16 THE COURT: The last answer to the last question?

17 MR. REID: Correct.

18 THE COURT: All right. Let's read the last question,  
19 not the one that was objected to, and the answer.

20 (Whereupon the last question and answer were read back as  
21 requested.)

22 Q (By MR. REID) Okay. So if a caregiver is assigned to  
23 a resident and it turns out the resident has a need that  
24 isn't necessarily listed in the resident's assessment book,  
25 did you give any instruction to the caregivers of what they  
26 were supposed to do?

27 A No. I wasn't -- I didn't, no.

28 Q I'm sorry, I didn't hear what you said.

1 A No. I wasn't in the community daily where they would  
2 have that, but there is individuals like the executive  
3 director or the collaborative team in the building that  
4 would be able to assist them with that.

5 Q Okay. As the regional care director, regional  
6 director of quality services, did you have an expectation  
7 that a caregiver would or would not provide services if it  
8 wasn't in the book?

9 A I expect them to provide services that were in the  
10 book or more. That's customer service.

11 Q Thank you.

12 A Yeah.

13 Q Um, the next one is "bring your community up to RCFE  
14 standards by reducing skilled interventions", and then it  
15 talks about "templates were provided." Do you know what  
16 that means?

17 A The templates, I have got to think about that. But  
18 the reducing skilled interventions regarding the RCFE, that  
19 is the resident care facility for the elderly's guidelines,  
20 yes.

21 Q Okay. What is that referring to, that section?

22 A Anyone that doesn't meet those guidelines, um, that  
23 are skilled or higher level of care, um, we need to put  
24 interventions in place. Um, let's say that, um, any  
25 interventions that were too skilled for the community that  
26 we were able to put systems in place we could, you see.

27 Q What type of systems are you talking about?

28 A Well, let's say if somebody was, um, a higher level of

1 care where they are not on Hospice but they meet the  
2 criteria, then we can -- then the community can discuss that  
3 with the family as one of the options to keep them in the  
4 building.

5 Q Discuss Hospice as an option?

6 A Yes.

7 Q I see. Okay. And the next point is "be sure  
8 ISP's" -- what is ISP?

9 A Individual service plans.

10 Q Okay. And "ADL sheets", what's ADL?

11 A That is their activities of daily living. It's a  
12 combination of three -- three different things.

13 Q Okay. "Make sure that those sheets are printed. If  
14 not implemented in your communities already, train your  
15 staff on use. We will review together how to obtain them in  
16 Vigilant." Can you tell the jury what all of that means?

17 A This is a book that should be in the communities. An  
18 individual service plan is when the family member or  
19 resident comes in, you can sit down and decide, based on  
20 these criterias, what service that individual needs to be --  
21 why they are in the community.

22 In relation to the ADLs, that is their activities of  
23 daily living, like brushing their teeth, doing their hair,  
24 taking a bath, if they can bathe themselves, if they need  
25 assistance in walking, and that book should be in every  
26 community.

27 Q Do you have an understanding of how that would relate  
28 to this topic matter of -- of keeping "the back door shut"?

1 A Well, you have to have a individual service plan in  
2 the community and if that individual service plan -- if you  
3 are abreast of it, you can see if it's increased, if they  
4 need more or less services.

5 Q Um, Exhibit 276, could you turn to that, please?

6 **(Joint Exhibit 276 was marked for identification.)**

7 Q (By MR. REID) Do you have that in front of you?

8 A Yes.

9 Q What is that document?

10 A It was a document sent from my RDO, Ronda Smith, to me  
11 regarding some quality services concerns in the med room,  
12 um, regarding Emerald Hills.

13 Q Okay. And the date of that?

14 A Um, March 2nd, 2009 --

15 Q Okay.

16 A -- is when I sent it or she sent it to me.

17 Q She sent it to you?

18 A Yes.

19 Q She responded to an e-mail you sent to her I think,  
20 right?

21 A Yes.

22 Q Okay. The e-mail you sent to her, what were you --  
23 what were you communicating in that e-mail?

24 A Basically, um, I was looking at different areas at  
25 Emerald Hills, such as their staffing for med techs, um, the  
26 Memory Care Unit, documentation, um, how to show more  
27 accountability and responsibility at Emerald Hills.

28 Q Okay. Um, the bottom half of this e-mail from you to

1 Ms. Smith, um, did you prepare that as part of your ordinary  
2 course of practice?

3 A Yes.

4 Q And, um, did you prepare the e-mail about the time  
5 that you, um --

6 MS. CLEMENT: I have no objection to this coming into  
7 evidence.

8 THE COURT: I'm sorry, I can't hear you.

9 MS. CLEMENT: I have no evidence to this coming in.

10 MR. REID: Then I would move 276 into evidence, your  
11 Honor.

12 THE COURT: All right. 276 is admitted.

13 **(Joint Exhibit 276 was admitted into evidence.)**

14 MR. REID: Thank you.

15 May I display it, your Honor?

16 THE COURT: Yes.

17 MR. REID: Thank you.

18 Okay. So, um, if you could, Ms. Ford, if you could go  
19 down to Ms. Marshall's part of the, um, e-mail? Okay.

20 Q (By MR. REID) So this is around March of 2009 that  
21 you did this investigation; is that correct?

22 A Yes.

23 Q Okay. And, um, directing your attention to bullet  
24 point or to number 2 where it says, "Rich has been in  
25 contact", um, could you tell us what you're communicating to  
26 Ms. Ronda Smith in that, um, that line?

27 A That the executive director, Rich, at that time spoke  
28 with the human resources, I think, director Audrey Withers

1 regarding Workmen's Comp cases.

2 Q Oh, okay.

3 A And that, I guess, would probably be in relation to  
4 Ginny because they put Workmen's Comp under quality  
5 services.

6 Q Oh, I see. Okay. Um, under the next section 1 it  
7 says "MCN dash 13." What is MCN?

8 A That is another name for their memory care  
9 neighborhood.

10 Q Okay. And then it says, 13 residents take -- I'm  
11 sorry. Let's start at B above that. "Restructuring of med  
12 techs, two med techs are not needed on the days or PM  
13 shifts", correct?

14 A Yes, that is written.

15 Q Okay. And then -- and then under that in number 1,  
16 "the memory care neighborhood", it says, "13 residents take  
17 less than 45 minutes", correct?

18 A Yes.

19 Q And so what, um -- and then it says "most of the time  
20 care duties are being performed." What does all of that  
21 mean? Please tell the jury.

22 A I take it at the time their census was down like 13  
23 residents. A lot of that would depend on if the  
24 residents -- to be in the Memory Care Unit if their dementia  
25 was -- there are different stages of dementia. So depending  
26 on the stage, if they needed, um, higher level of care or  
27 not.

28 Q Okay. Um, now, in your experience is it then -- as a



1 nurse in assisted living do all residents in memory care all  
2 require assistance with medications?

3 A Anyone in assisted living, yeah, they have to -- yes.  
4 In assisted living they cannot dispense -- they cannot house  
5 their own medications.

6 Q Okay. But do all, in your experience, all  
7 residents -- all memory care residents need some kind of  
8 medication?

9 A Not all. I can't use the word all, no.

10 Q Okay.

11 A They are individually assessed.

12 Q So when it says "13 residents", what does that  
13 indicate, that there is only 13 residents in the building or  
14 13 residents -- or in memory care or 13 residents who are  
15 acquiring assistance within medications?

16 A I couldn't answer that from that line.

17 Q Okay. Um, and then number 2 it says, "one med tech  
18 can do both the AL and MCN", correct?

19 A Yes.

20 Q What does that mean?

21 A So depending on the shift you would have to have one  
22 med tech who would cover both the memory care neighborhood  
23 and the assisted living part.

24 Q And this e-mail -- this -- this e-mail that you're  
25 writing, is this based on your personal observation of  
26 what's -- what was going on at Emerald Hills at the time?

27 A In addition to the executive director and the CTM and  
28 the team and the med techs.

1 Q All right.

2 A Yeah.

3 Q How would one med tech do -- pass meds in both the  
4 assisted living and memory care neighborhoods?

5 A I would have to look at the census because not  
6 everybody in assisted living may need medications.

7 Q I'm skipping down to C. It says, "Omnicare audit has  
8 been completed regarding med tech documentation." Do you  
9 know what that means?

10 A Omnicare is a pharmacy that we use to come in and do  
11 audits. Um, they are scheduled periodically throughout the  
12 year, but we can call them in to come in if we think there  
13 is a concern to look at the medication room and that  
14 includes the documentation of -- they have the training, med  
15 techs have the training.

16 Q Okay. If we look at page 2 in the interest of time  
17 here, um -- go down to -- yeah, there we go.

18 Now, it talks about "Rich is aware of all of the  
19 systems put in place and those that are pending." Rich  
20 being the executive director; is that correct?

21 A Yes.

22 Q All right. And then under bullet point 1 it says  
23 "staffing, caregivers overstaff, weekend coverage of  
24 caregivers, two caregivers in MCN versus one med tech and  
25 one caregiver." What does that mean?

26 A Emeritus has a way of using the med techs to do dual  
27 or multiple roles and this should give the idea that you  
28 can't use a med tech to be a caregiver and MCN and pass meds

1 too in AL. So it's best to have just two caregivers, um,  
2 and take out a med tech.

3 Q Okay. Thank you.

4 A Sure.

5 Q Now, number 5, "I will be bringing over RCDs and/or  
6 wellness coordinators to assist in capturing revenue from  
7 the Vigilant to e-site reports." What does that mean?

8 A Basically taking a nurse from another community or  
9 wellness, um, coordinator from another community to help  
10 with the quality services person in the building or the  
11 executive director and finding out if the Vigilant  
12 assessments are accurate.

13 Q Okay. What if they are not accurate?

14 A They should at least be able to explain to us if we  
15 are over-billing people for things they haven't gotten done  
16 or if they are not -- they need more assistance or, um,  
17 basically if there is any areas that they can catch more  
18 money and the assessments in Vigilant.

19 Q Would they also be looking for areas where residents  
20 are getting more care than they are paying for?

21 MS. CLEMENT: Objection --

22 THE WITNESS: Definitely.

23 MS. CLEMENT: -- it's misleading.

24 THE WITNESS: All of those.

25 THE COURT: Sustained.

26 Q (By MR. REID) Um, I recall yesterday when Ms. Clement  
27 was asking you questions, I believe you testified that in  
28 March of 2009 there was a wellness coordinator instead of a

1 resident care director at Emerald Hills. Did I get that  
2 right?

3 A I probab -- yeah, if I said it. I can't remember.

4 Q I don't want to put words in your mouth but when --  
5 when we look at number 8, "assist with I-recruiter, I'm also  
6 using this", what is I-recruiter?

7 A That's another tool Emeritus has to help, um, find  
8 applicants for nurses basically.

9 Q Okay. So when you wrote number 8, "assist with  
10 I-recruiter", um, do you have an understanding what you were  
11 communicating there?

12 A Yes.

13 Q What?

14 A Basically for the team within the community, the  
15 executive directors or myself or Lisa Hulse, would be able  
16 to find out if there are other applicants that we can  
17 interview for the position.

18 Q All right. There is one other exhibit that you  
19 brought yesterday, it's Exhibit 271. It's, um, 68 pages.  
20 I'm not going to go through all of it.

21 What is Exhibit 261?

22 A It's called a comprehensive process review.

23 MR. REID: All right. I do -- and I believe that has  
24 been admitted, your Honor.

25 THE COURT: No, it hasn't.

26 MR. REID: Oh, it has not?

27 THE COURT: Did you say 261?

28 MR. REID: 271.

1           THE COURT: 271. I apologize. That one has been  
2 admitted.

3           Q       (By MR. REID) Yesterday you recall that we went  
4 through the memory care section of this document?

5           A       Yes.

6           Q       Okay. I want to, um -- I want to just focus on the  
7 section that you filled out, okay? Perhaps let me draw your  
8 attention to page 20 of the document.

9                   Do you see that?

10          A       It says "Hospice" on top, 20 of 68?

11          Q       Yes. Uh-huh.

12          A       Yes.

13          Q       Do you see your name kind of as the signature person  
14 completing --

15          A       Yes.

16          Q       And what does -- what does it signal that your name is  
17 in that section of this document?

18          A       That I did it.

19          Q       That you did this section?

20          A       Yes, the quality services part.

21          Q       Got ya. Now, this was done -- this CPR was done when?

22          A       Usually it's a month after we send out the letter and  
23 then at that time individuals come all at once and some  
24 individuals have to schedule when they can come in.

25          Q       Okay. Let me direct your attention to page 4 of the  
26 document. There is a date up at the top that I want to ask  
27 you if that means anything.

28          A       Okay.

1 Q Okay. Do you see that date there?

2 A Yes.

3 Q And, um, 11/11/2008, correct?

4 A Yes.

5 Q What does that date signify?

6 A The completion of the -- the completion of this form.

7 Q Okay. So I would like to quickly go through the  
8 section of the CPR that you did. Does that section "quality  
9 services" start on page 10?

10 A Yes.

11 MR. REID: All right. Your Honor, may we display, um,  
12 this section of the document?

13 THE COURT: So long as we know what page it is. Just  
14 tell us.

15 MR. REID: We are starting on page 10 of Exhibit 271.

16 THE COURT: Okay.

17 MR. REID: All right. Are you able to bring that up a  
18 little bit bigger, Ms. Ford?

19 Q (By MR. REID) All right. So in general can you tell  
20 us what you're looking at when you're doing this quality  
21 services part of the CPR?

22 A Normally under "reporting requirements" there is  
23 certain stated information that they want us to look at and  
24 it's going to go from different categories and topics of  
25 quality service to be looked at.

26 Q Okay. At least on page 10 there you gave all 5s,  
27 correct?

28 A Yes.

1 Q So in the areas of continuity of services, continuing  
2 requirements, um, you found full compliance; is that  
3 correct?

4 A Yes.

5 Q And then the health and wellness promotion, um,  
6 what -- what -- we have all of the subcategories, but what  
7 are we looking at in health and wellness promotion?

8 A These are if residents are participating in  
9 activities, um, if they are -- if there is an activity  
10 calendar that is posted. Um, basically the activities for  
11 the residents.

12 Q Okay.

13 A And --

14 Q And that was full compliance in that section?

15 A Yes.

16 Q Then, um, the next section, evaluation and  
17 re-evaluation, um, starts on this page. You have full  
18 compliance on those two?

19 A Yes.

20 Q Okay. On page 11 -- if we could turn to page 11, that  
21 section continues. Now, the top box, there is an NA.  
22 What -- what -- what category is that?

23 A The resident is provided modified diets as ordered by  
24 the MD and acceptance is documented for memory care  
25 residents.

26 Q Okay. So when you write "NA", what does that mean?

27 A At the time that was not applicable.

28 Q Okay. Um, the next box is a 5, why did you write 5

1     there?

2     A       The resident's pre move-in evaluations are completed.

3     Q       Okay. And then, um, the next box is a 3. Why did you  
4     write a 3 there?

5     A       If the resident's move-in -- have had move-in  
6     evaluations.

7     Q       So do you know why there is a 5 and a 3, do you know  
8     what that signifies at this point in time?

9     A       When we do this we get to pick random charts.

10    Q       Okay.

11    A       So we may have picked random charts that they had, um,  
12    on those evaluations that were completed. And I'm assuming  
13    that, um, during these resident move-in evaluations, you  
14    know, that's one is they are moved in and one is when they  
15    are pre moved in, before they move in.

16    Q       Okay. Then, um, the next box has to do with Vigilant  
17    evaluations. We talked about it. In November of 2008, um,  
18    what was the status of Vigilant being implemented and  
19    utilized in all of the buildings that you were overseeing?

20    A       Um, if I -- my recollection calls, I think Vigilant was  
21    an Emeritus tool in some of the buildings that -- that  
22    weren't -- and even those that had -- it was trying to be  
23    more user friendly for people. So not everyone used it.

24    Q       Okay. Um, and then -- so we have -- also then we see  
25    this bulletin in the resident care systems there, correct?

26    A       Yes.

27    Q       On the next page, page 12, we have a zero, um,  
28    concerning the elopement binder. What does that mean?



1 A People escaping -- leaving the community without  
2 signing out as a leave of absence or they just walked out  
3 the building.

4 Q Okay. So what was the -- what was taking place at  
5 that time to -- to deal with the -- well, what was to -- to  
6 deal with that issue? The issue of elopement -- elopement  
7 binder in place and you have zero, there is some comments  
8 there. What do those comments indicate?

9 A Basically telling the community to, um, institute the  
10 policies and procedures that were, um -- that Emeritus has  
11 for their elopement.

12 Q Okay. Now, at that time, in November of 2008, do you  
13 remember whether there were residents that were able to come  
14 and go as they pleased?

15 A I don't think so, without signing a leave of absent  
16 book.

17 Q Okay. So they have to sign in and sign out when  
18 they --

19 A Yes.

20 Q I see. All right. Then the next section is, um,  
21 resident services, medical services, and it looks like they  
22 got pretty good scores there for the most part, huh?

23 A They didn't have any -- yes.

24 Q On page 13, this is part of -- still part of what you  
25 evaluated, correct?

26 A Yes.

27 Q Now, under colostomy/ileostomy. First, colostomy, can  
28 you explain what that is?

- 1 A It's a person that has an incision in their intestinal  
2 tract that they have a bag in which they defecate through  
3 the bag.
- 4 Q Okay. How about ileostomy, what is that?
- 5 A The same thing, except a different system.
- 6 Q All right. Now, you have NAs in all of those  
7 categories, so what does that indicate?
- 8 A They -- none were in the community at the time or --
- 9 Q When we talk about acuity levels, colostomy,  
10 ileostomy, is that something lower on the acuity level or  
11 higher, or where would it be?
- 12 A I guess that would depend if the resident can do it  
13 themselves or not.
- 14 Q All right. And so it's -- then indwelling urinary  
15 catheter, NAs. Is that the same thing?
- 16 A Yes.
- 17 Q Didn't have anybody with a catheter?
- 18 A Yes.
- 19 Q Okay. The next page, 14, um, we have the diabetes  
20 section. Um, how did they score diabetes wise?
- 21 A In total or -- that page? Good.
- 22 Q Okay. Now, there is a NA on box 2. What does that  
23 indicate?
- 24 A If there is a choice between number 1 and number 2 --
- 25 Q Uh-huh.
- 26 A -- and number 2 is saying it's not applicable because  
27 number 1 is in place.
- 28 Q So you would use box 2 when?

1 A If a resident cannot completely self-administer care  
2 of the condition, then appropriately skilled professionals  
3 must be provided for that care or assistance.

4 Q So does that mean that there wasn't anyone in the  
5 building at that time that needed help administering their,  
6 um, diabetes from a licensed professional, they could do it  
7 themselves?

8 A Yeah.

9 Q Okay. Page 15, the diabetes is continued, right?

10 A Yes.

11 Q And it looks like there was full compliance when it  
12 came to the diabetes issue?

13 A Yes.

14 Q Now, the next section is healing wounds, um, and you  
15 have, um -- in boxes 1 and 2 you have NA. What does that  
16 mean?

17 A NA means not applicable.

18 Q Okay. So what did you look for at that point in time  
19 and what did you find out?

20 A The first box, healing wounds are allowed when wound  
21 care is performed by or under the supervision of an  
22 appropriately skilled professional and that was non  
23 applicable.

24 The second one was, healing wounds are allowed when  
25 the wound is a result of a surgical intervention and care is  
26 performed as directed by the surgeon, and that was non  
27 applicable.

28 Q Okay. You have a -- you gave a full compliant score

1 on the third box, correct?

2 A Yes.

3 Q And what -- what, um -- what is that category  
4 involving?

5 A Residents with stage 1 or 2 pressure sores, such as a  
6 dermal ulcer, must have the condition diagnosed by an  
7 appropriately skilled professional.

8 Q Okay. And since there is a 5, full compliance, what  
9 does that mean you found in November of 2008?

10 A That residents with stage 1 or 2 pressure sores, that  
11 they were in compliance.

12 Q In compliance meaning the condition had been diagnosed  
13 by an appropriately skilled professional?

14 A Yes. But November 2008 was when the -- this document  
15 was completed.

16 Q Okay.

17 A Okay.

18 Q When -- do you know when you did your evaluation?

19 A I would have to look in my calendar. I mean, I have  
20 the dates of everyone that did it and sent it in, but I  
21 think it's October.

22 Q Okay.

23 A I'm thinking, but I would have to look up the exact  
24 date.

25 Q All right. So somewhere within October, November,  
26 that's when you did that; yes? Is that your understanding,  
27 without looking at your calendar?

28 A Yes.

1 MS. CLEMENT: Objection, it's leading.

2 THE COURT: It's okay on this question. Let's go.

3 Q (By MR. REID) All right. On page 16, um, now box 4,  
4 we have partial compliance, 3, and this section is,  
5 community is free of stage 3 or 4 pressure ulcer, correct?  
6 Do you see that?

7 A Yes.

8 Q And then in the comments it says, Hospice equal 114.  
9 What does that mean? Do you know?

10 A No. There is no recall.

11 Q Okay. The rest of the -- number 5, the box number 5  
12 you gave full compliance, what's that section?

13 A That the community is free of bed-bound totally  
14 dependent residents who is not on Hospice.

15 Q Okay. What does that mean?

16 A That residents are -- there aren't any residents that  
17 are totally dependent in the community that are on  
18 Hospice -- that are not on Hospice. Excuse me.

19 Q Put it another way, if somebody is totally bed-bound  
20 and totally dependent they were on Hospice?

21 A They should have been, yes.

22 Q Okay. And you found full compliance, right?

23 A Yes.

24 Q Okay. And then what's box 6?

25 A Um, the resident shall receive care for the pressure  
26 sore or dermal ulcer from an appropriately skilled  
27 professional.

28 Q All right. That was full compliance?

1 A Yes.

2 Q All right. Then the other sections there are also  
3 full compliance in your, um, in your review, correct?

4 A Yes.

5 Q Okay. The next page, um, it says, dealing with  
6 resident records. Um, I won't go through all of them, but  
7 we have full compliance and partial compliance, right?

8 A Yes.

9 Q Next page, 18, continued with resident records and,  
10 again, we have some full compliance and some partial  
11 compliance, right?

12 A Yes.

13 Q And then the risk incident management section, um,  
14 pretty much full compliance there that you found at that  
15 time, 2 -- 2 partial compliance?

16 A And some non compliance.

17 Q Okay. I'm looking at page 18 of 68.

18 A My fault. I'm on the wrong page. Yes.

19 Q Okay.

20 A Wrong page.

21 Q I'm sorry. You -- you jumped ahead, right, you read  
22 ahead?

23 A That is my story.

24 Q All right. Page 19, let's look at that one. Could  
25 you pull that up a little bit higher?

26 Um, there are some non-compliance on that page. The  
27 first non-compliance is what?

28 A All follow-up actions completed or follow-up

1 continuing with documentation ongoing as noted on the acuity  
2 documentation schedule.

3 Q Okay. What does that mean?

4 A They didn't have a schedule that lists how severe or  
5 not severe the resident was acuity wise.

6 Q An individual resident or all of the residents in the  
7 building?

8 A Oh, this would be for anybody -- everybody, the  
9 building.

10 Q Okay. So from what I understand they didn't have like  
11 a list of all residents and what all of their acuity levels  
12 was?

13 A No, they didn't have that.

14 Q Okay. And you wanted -- you found that that needed to  
15 be implemented?

16 A Yes.

17 Q All right. Um, and then we have, um, non-compliance  
18 on monthly accident -- incident analysis completed monthly.  
19 What does that mean?

20 A In the communities when there are incidents, falls,  
21 um, individuals that go out on 911, um, they should have a  
22 binder in there that you just go to per se.

23 Q Okay. They needed a binder?

24 A That we can check that every month, we can see that  
25 there is a record of a process that has been done.

26 Q Okay. Up above that, the event management form, you  
27 found full compliance, right?

28 A Yes.

1 Q They were doing the forms, they didn't have them in  
2 the binders to easily access; is that what we are talking  
3 about?

4 A They didn't have an analysis of how many they had what  
5 on, yes, in a binder in the community.

6 Q All right. Then you found full compliance with regard  
7 to the obligation to notify licensing of, um, incidents that  
8 they required notice of?

9 A Yes.

10 Q Okay. All right. Let's -- let's move on to page 20,  
11 the last page of your section. Mostly full compliance. Um,  
12 we have full compliance on the first four and then we have,  
13 um, an NA with regard to Hospice --

14 A Yes.

15 Q -- correct?

16 And then it looks like, is staff using a pain scale  
17 when assisting in administering pain medication, and you  
18 didn't find it in the medication record; is that correct?

19 A Yes.

20 Q Okay. Now, um -- so I think we have gone through the  
21 documents that you brought to court yesterday. Are there  
22 any other documents that you brought with you, um, to show  
23 to the jury?

24 A No.

25 Q Um, do you have any documents that, um, that talk  
26 about, um, chronic understaffing in all of the buildings in  
27 your region?

28 A I have communications from maybe the regional team as



1 discussing about staffing or our business development calls.

2 Q Okay. Did you bring those documents to court?

3 A No.

4 Q Did you bring any, um -- did any of those documents we  
5 looked at, um, reflect any complaints or concerns you voiced  
6 concerning staffing levels at any of the communities?

7 A All of the CPRs, if I'm understanding right. The CPR  
8 report is sent out to my VP, it's sent out to the community,  
9 and it's followed up on.

10 Q Okay. Let's do it this way --

11 A Okay.

12 Q -- those documents that we looked at, any documents  
13 you brought that dealt with understaffing would be in those  
14 documents we looked at, correct?

15 MS. CLEMENT: The question is vague, your Honor.

16 THE COURT: As phrased it is.

17 Q (By MR. REID) Um, when we were going through the  
18 documents was there any document that addressed concerns  
19 about residents being accepted or retained when they weren't  
20 appropriate for the community?

21 A At -- no, not at that time when I started in 2008, no.

22 Q Now, when the, um -- you -- before you left Emeritus  
23 in October of 2010 you actually -- did you play a role in  
24 helping the -- Emeritus try to gather documents and respond  
25 to requests from Ms. Clement?

26 A Yes.

27 Q Um, the documents, those -- those documents that we  
28 just looked at, when did you -- when did you find those

1 documents?

2 A I would have to look in my binder. I think when Lisa  
3 called or e-mailed me that this is a role -- they had  
4 another attorney, so I think it was August, um, summer. I  
5 would have to look at my books when I actually started  
6 looking.

7 Q Okay. Is it your -- did you bring those -- these  
8 documents to your deposition that was taken on March 30th,  
9 2012?

10 A Yeah, I brought -- well, I brought some of the  
11 documents there, yes.

12 Q Okay. Um, were these documents that we referred to  
13 that you brought to court with you, were they attached as  
14 exhibits to your deposition?

15 A My deposition was stopped, so nothing really -- at my  
16 deposition nothing was presented except some things out of  
17 my, um, calendar.

18 Q Okay. Um, did you have that CPR in your hand at the  
19 deposition?

20 A No.

21 Q When did you -- when did you give the CPR to  
22 Ms. Clement?

23 A After conference call with my sister and I didn't get  
24 a response from Emeritus and find out that I was told that I  
25 was fired from the company and that they were trying to  
26 represent me.

27 Q Um, so you were fired from Emeritus?

28 A Not that I knew of. I thought we left on a mutual

1 agreement, that was what I was told at Starbucks, and I can  
2 even use them as a reference. I didn't find that out until  
3 I got to deposition.

4 Q Who told you you were fired?

5 A Based on the fact that, um, it came out in the  
6 deposition, um, right there that I was, um -- I was told,  
7 um, um, I was being represented when -- you know, it's a  
8 legal precedent. I don't know what it is. It's a document  
9 they showed why would somebody represent you kind of case.

10 Q So Ms. Clement told you that you were fired?

11 A If I knew that I was, um, fired from the company or  
12 they -- that is the perception I got.

13 Q Did she tell you that if you were fired then it  
14 wouldn't be appropriate for Emeritus to provide a lawyer for  
15 you?

16 A I couldn't understand why I would -- they would want  
17 to provide a lawyer for me if they didn't think I was -- I  
18 had to be fired.

19 Q But you weren't fired, were you?

20 A From my interpretation is that, um, it was a mutual  
21 agreement that we were going to be split up, go separate  
22 ways. They knew I wanted to leave. And based on what Lisa  
23 told me at that time, the litigations that were in the  
24 community, my, um, performance evaluation that she did, and  
25 when I asked her who is doing this she said, Everyone, so  
26 I'm assuming it was her and up.

27 Q Has anyone ever, other than Ms. Clement, ever told you  
28 that you were fired from Emeritus?

1 A No.

2 Q Um, now, I -- I looked at your testimony from  
3 yesterday carefully. The court reporter, um, prepared it  
4 for us. I did see where you testified that that CPR that we  
5 were looking at, that you gave it to Ms. Hulse?

6 A Yes.

7 Q Okay. Um, did you give it to Ms. Hulse in 2008 when  
8 it was prepared?

9 A It was 2008, in December -- yes, I gave it to her.

10 Q When was the next time that you remember seeing that  
11 CPR?

12 A When they asked for it in the -- looking for, um,  
13 things to -- that they asked for from Ms. Clement's office.  
14 So I'm not sure the month I started investigating at Emerald  
15 Hills those documents.

16 Q Right. You spent a lot of time looking for documents  
17 to respond to those requests, right?

18 MS. CLEMENT: Leading, your Honor.

19 THE COURT: Sustained.

20 Q (By MR. REID) Was getting those documents that  
21 Ms. Clement requested, was that a quick easy process?

22 A I think it took a couple of months.

23 Q Now, do you have a memory in August of 2010 while you  
24 were helping look for documents to respond to discovery that  
25 you did not have the 2008 CPR in your possession?

26 A I've always had the 2000 -- see, it's on my computer,  
27 and it was sent to Lisa and I keep copies.

28 Q Okay. Do you recall in August of 2010 indicating that

1     neither you nor Lisa could find the 2008 CPR?

2     A       That -- I probably couldn't find it at that time, no.

3     I mean --

4     Q       Do you recall that in March -- in August of 2010  
5     indicating -- you indicated that you didn't have the, um,  
6     2008 CPR, Lisa Hulse did not have the 2008 CPR, and Emeritus  
7     Corporate didn't have the 2008 CPR?

8     A       I'm sorry, do I -- can you repeat that?

9     Q       Do you recall communicating with others in August of  
10    2010 that neither you, Lisa, or Emeritus Corporate had the  
11    2008 CPR?

12   A       I would have to read a documentation if I wrote that.  
13   I know that, um, she asked me for the CPR in an e-mail and  
14   that all of the communications that we have had in 2008 was  
15   either done by e-mails, conference calls, and -- and an  
16   e-mail that I have is that I sent her -- she asked me to  
17   send her the 2008 CPR.

18           MR. REID: Your Honor, may I approach the witness and  
19   show her Exhibit 5031, a portion of that to see if it  
20   refreshes her recollection?

21           THE COURT: Yes.

22           **(Joint Exhibit 5031 was marked for identification.)**

23   Q       (By MR. REID) I just want you to read it to yourself,  
24   okay?

25   A       Okay.

26   Q       Um, that portion. I highlighted it.

27   A       Okay. Okay.

28   Q       All right. Does that document refresh your

1 recollection that in August of 2010 you communicated with  
2 others that you couldn't -- you couldn't find the 2008 CPR,  
3 Lisa couldn't find the 2008 CPR for Emerald Hills, and  
4 Emeritus Corporate didn't have it?

5 A Yes.

6 Q Now, one of the documents -- one of the things that  
7 you were trying to find in 2010, the summer of 2010, were  
8 documents related to Mrs. Boice at Emerald Hills; is that  
9 correct?

10 A Yes.

11 Q And do you recall that in that search for documents  
12 you determined that there were Vigilant assessments completed  
13 on Ms. Boice in September and November of 2008 in the  
14 computer system at that time?

15 MS. CLEMENT: Objection, your Honor, leading, exceeds  
16 the scope.

17 THE COURT: Sustained.

18 Q (By MR. REID) Do you recall, Ms. Marshall, that while  
19 you were searching for documents, um, were you able -- I  
20 will ask it a different way.

21 While searching for documents in the summer months of  
22 2010, were you able to find Vigilant assessments related to  
23 Mrs. Boice?

24 A I don't remember if I found Vigilant assessments.

25 MR. REID: Your Honor, if I could -- may I approach  
26 the witness and show her Exhibit 5028?

27 THE COURT: All right. Is this to refresh her  
28 recollection?

1           **(Joint Exhibit 5028 was marked for identification.)**

2           MR. REID: Yes, your Honor.

3           THE COURT: Okay.

4           Q        (By MR. REID) Ms. Marshall --

5           A        Yes.

6           Q        -- if you would kindly review the highlighted portion  
7 of 5028 and see if that refreshes your memory on this topic.

8           A        Okay.

9           Q        In looking at that document, does it refresh your  
10 recollection that in the -- in August of 2010 you were able  
11 to determine that two Vigilant assessments existed in the  
12 computer system concerning Mrs. Boice?

13          A        Yes.

14          Q        Does it refresh your recollection that on August 13,  
15 2010, you indicated you were going to have those printed?

16          A        Yes. Or Monica was going to print it. I'm --

17          Q        Okay. Um, do you now recall that you actually did  
18 print out, um, Vigilant assessments related to Mrs. Boice in  
19 August of 2010?

20                 MS. CLEMENT: Objection, misstates testimony.

21                 THE COURT: Sustained.

22          Q        (By MR. REID) Um, as you sit here today do you  
23 remember seeing Vigilant assessments, um, concerning  
24 Ms. Boice?

25          A        I don't recall if I saw them.

26          Q        You don't have a memory one way or the other?

27          A        No. I don't recall if I ran through her Vigilant  
28 assessments.

1 MR. REID: Okay. Your Honor, may I approach the  
2 witness to show her Exhibit 67, pages 5 through 9 --

3 MS. CLEMENT: Exceeds the --

4 MR. REID: -- to refresh her recollection?

5 MS. CLEMENT: My objection is it exceeds the scope.

6 THE COURT: You can.

7 MR. REID: Thank you.

8 **(Joint Exhibit 67, pages 5 through 9, were marked for**  
9 **identification.)**

10 Q (By MR. REID) Please take a look at that document and  
11 see if you recognize it and if it refreshes your memory.  
12 Okay.

13 Have you had a chance to look at that?

14 A Yes.

15 Q Okay. Does that document refresh your recollection of  
16 seeing any Vigilant assessments performed on Mrs. Boice?

17 A This is a Vigilant assessment, um, yes.

18 Q Okay. And tell the jury what a Vigilant assessment is?

19 A It's, um, a tool used by Emeritus in which a resident,  
20 when they come in, they are able to ask them questions  
21 related to certain categories and then they get a numerical  
22 rating of points and it also gives the person the ability to  
23 write in comments.

24 Q Okay. And this document, um, that you looked at to  
25 refresh your recollection, are those -- is that a kind of  
26 document that you were familiar with in -- when you were  
27 working as a regional director of quality for, um, Emeritus?

28 A Yes.



1 Q And were those documents, um, prepared in the ordinary  
2 course of business?

3 A For the community?

4 Q Yes.

5 A I hope so, yeah.

6 Q Okay. And were the documents, um, when prepared, were  
7 the persons who prepared the documents, um, expected to  
8 enter the information accurately?

9 MS. CLEMENT: It's leading.

10 THE COURT: Sustained.

11 Q (By MR. REID) Um -- or the -- was there any  
12 requirement about, um --

13 THE COURT: Are we working on a exception to the  
14 Hearsay Rule here?

15 MR. REID: Yes, your Honor.

16 THE COURT: All right. Go ahead.

17 MR. REID: Okay.

18 Q (By MR. REID) Um, do you have any reason to believe  
19 that that document, Exhibit 67, pages 5 through 9, isn't  
20 accurate?

21 A No.

22 Q And, um, with regard to the expectations of Emeritus  
23 and in particular you, as a regional director of quality  
24 services, um, was it -- was there an expectation as to how  
25 quickly the information should be entered into the computer  
26 system in terms of when it's obtained?

27 A Yes.

28 Q What's the expectation?

1 A Well, this one is a 30-day eval.

2 Q Okay. And so what does that mean?

3 A Thirty days we evaluate them after their move-in date.

4 Q Okay. So on a 30-day evaluation, that's 30 days after  
5 the prior evaluation?

6 A Well, this was more.

7 Q Okay.

8 A But, yeah.

9 Q All right. The question I have is, when someone makes  
10 observations to put into that report, is there an  
11 expectation as to how quickly they are supposed to enter the  
12 information?

13 MS. CLEMENT: Objection, it's vague.

14 THE COURT: With respect to the exception to the  
15 Hearsay Rule, you can lead on the questions as long as they  
16 are the questions that are required by the Evidence Code.

17 MR. REID: Okay. Thank you, your Honor.

18 Q (By MR. REID) Um, when, um -- as the regional  
19 director of quality services, was it your expectation that  
20 the person making the observations would input the  
21 information into the computer system at or about the time  
22 that they made those observations?

23 A Yes.

24 Q And was the expectation that the information would be  
25 entered accurately?

26 A Yes.

27 Q And were the documents kept in the ordinary course of  
28 business for Emeritus?

1 MS. CLEMENT: Object to the question. Is it for the  
2 whole corporation or Emerald Hills? It lacks foundation  
3 otherwise.

4 THE COURT: Overruled.

5 You can answer.

6 THE WITNESS: Could you repeat that, please?

7 MR. REID: Yes.

8 Um, I forgot what I asked.

9 THE COURT: Brooke, read it back, please.

10 (Whereupon the last question was read back as requested.)

11 THE WITNESS: Yes.

12 Q (By MR. REID) And did -- did you rely on these  
13 documents in doing your, um -- as a regional director of  
14 quality services in doing your job in the communities?

15 A Yes.

16 MS. CLEMENT: My objection, your Honor, is that -- is  
17 he referencing specifically this particular Vigilant report?

18 THE COURT: I understood your objection.

19 MS. CLEMENT: Thank you. Sorry.

20 THE COURT: It's overruled.

21 MR. REID: Your Honor, at this time I would move  
22 Exhibit 67, pages 5 through 9, into evidence.

23 THE COURT: Can I have 67, please? Okay. I'm just  
24 trying to verify, this is Exhibit 67?

25 MR. REID: Yes. Pages 005 through 009.

26 THE COURT: Is there any objection?

27 MS. CLEMENT: I don't think he has established -- I  
28 don't think he has established a foundation with this

1 witness that this document was prepared at the time.

2 THE COURT: Okay. The objection is overruled.

3 Exhibit 67, 05 through 09, is admitted.

4 **(Joint Exhibit 67, pages 5 through 9, were admitted into**  
5 **evidence.)**

6 MR. REID: Thank you, your Honor.

7 Um, with permission could we briefly display that to  
8 the jury, your Honor?

9 THE COURT: Go ahead.

10 MR. REID: Maybe if you could highlight the top part  
11 of that, Ms. Ford?

12 Q (By MR. REID) Okay. Um, so just to orient the jury,  
13 Ms. Marshall, this is a -- what is this document, this  
14 particular document we are looking at?

15 A An assessment tool called Vigilant.

16 Q And -- and what's -- what was it -- what is the date  
17 of it?

18 A This is a 30-day re-evaluation, um, that was done on  
19 11/24 of 2008.

20 Q Okay. And if you could pull out, Ms. Ford?

21 As we go through the document -- it's a number of  
22 pages long. I don't want to take the time right now to go  
23 through all of the sections, but can you tell the jury what  
24 kinds of things the observer at Emerald Hills was looking at  
25 when assessing Ms. Boice at that time?

26 A Basically why the -- what the person's medical concern  
27 was, what the diagnosis is. Um, also they are looking at  
28 any medication information, so what their medications are,

1 if they are allergic to any medicines. They also want to  
2 look at, um, any skin evaluations before they come in or --  
3 it's a 30-day -- so while they are there. Um, also any  
4 mental information, cognitive information, like if they are  
5 confused or oriented. Um, information regarding any, um,  
6 behavioral concerns, how they speak, if they can do  
7 activities. If they can dress themselves, so their ADLs.  
8 Housekeeping issues, so if we do their laundry or the  
9 family. If they smoke, if they drive their own car. Any  
10 financial management they want the community to do or their  
11 family members.

12 Q Okay. A lot of different components and criteria on  
13 the form, correct?

14 A Yes.

15 Q And so on the -- could you highlight just the upper  
16 right-hand section there, Ms. Ford?

17 So where we see this thing about, um, points  
18 assigned -- and now pull out, please. Maybe highlight that  
19 column.

20 What -- what does that mean, "points assigned",  
21 Ms. Marshall?

22 A Vigilant comes up with its own points, so it's already  
23 pre-set. So if they enter information it can change those  
24 points values. And this is the points that deal with that  
25 individual service plan, how much care would they need a  
26 staff member to do.

27 Q Okay. Now, does the points relate necessarily to --  
28 does it quantify -- let's -- so let's -- let's look at, um,

1 page 2. Sorry to change topics there. Look at page 2 under  
2 section, um, um, 1 F. Do you see that?

3 A "Activity life enrichment"?

4 Q Yes.

5 A Yeah. Okay.

6 Q And it has point 75 points. Does that relate to  
7 actual time or is it just a -- it's just a number or do you  
8 know?

9 A It relates to us asking -- encouraging the residents  
10 to -- it seems, from what is written here, to encourage the  
11 residents to participate in activities. Somebody -- a  
12 person has to encourage them. It's based on minutes, if I  
13 remember right.

14 Q Okay. All right. Um, now, going to the last page  
15 then. You see that there is no signatures or names listed  
16 on Exhibit 67, page 9. Um, do you know why that is?

17 A It could be a couple of reasons. Um, if a family  
18 member wasn't available or if they mailed it out or if they  
19 made arrangements or if they didn't agree with it or --  
20 there could be various reasons.

21 Q Drawing your attention to the -- to the e-mail I  
22 showed you a little while ago concerning printing out the  
23 Vigilant assessment. Um, would that have any relation to  
24 whether there would be names and signatures on this page?

25 MS. CLEMENT: Leading.

26 THE COURT: Sustained.

27 Q (By MR. REID) When the -- when the Vigilant  
28 information is entered into the system, do the signatures go

1 in the system?

2 A No, no, no.

3 Q Okay. Now, if you could bring up that top box there  
4 then?

5 So as of November 24, 2008, um -- can you tell the  
6 jury what we are looking at in terms of that summary box?

7 A It's a accumulation of all of the points that, based  
8 on the comments the person put in, would total up to  
9 whatever the charge is for that resident.

10 Q Okay. And in this instance the total charges for the  
11 care was what?

12 A \$1,500.

13 Q Thank you.

14 Now, I would like to turn your attention then to pages  
15 1 through 4 of Exhibit 67 and, um, see if we can have the  
16 lights on now.

17 Thank you, Mr. Taylor.

18 **(Joint Exhibit 67, pages 1 through 4, were marked for**  
19 **identification.)**

20 Q (By MR. REID) Have you looked at those four pages,  
21 the first four pages --

22 A Yes.

23 Q -- of Exhibit 67, pages 1 through 4?

24 A Yes.

25 Q Okay. And do you -- what is that document?

26 A "Division"?

27 Q Yeah. Tell the jury what it is.

28 A It's a Vigilant assessment. That is a tool used by

1 Emeritus to, you know, based on certain categories would  
2 give them a numerical rating.

3 Q Is this the same type of document that we have just  
4 been looking at except a different date?

5 A Different date? This is the same document we were  
6 talking about.

7 MR. REID: Okay. May I approach the witness, your  
8 Honor --

9 THE COURT: Yes.

10 MR. REID: -- to verify? Thank you.

11 If it's okay, your Honor, I'm going to pull the  
12 exhibit off of the shelf for this witness.

13 THE COURT: Go ahead.

14 MR. REID: Thank you. All right. There we go.

15 Q (By MR. REID) Do you see the numbers are over here?  
16 Okay.

17 So if you wouldn't mind, could you take a look at  
18 Exhibit 67, pages 1 through 4? Okay.

19 Have you looked at that?

20 A Yes.

21 Q And what is that -- what is that document, those four  
22 pages?

23 A Part of a Vigilant assessment.

24 Q Okay. And, um, what is the -- is that a similar  
25 document to what we were just looking at, same kind of --

26 A Yes.

27 Q Okay. Different date?

28 A Yes.



1 Q What's the date on that document?

2 A Well, there is three dates. The initial date is 9/30,  
3 the next assessment date is 10/30/2008, and the move-in date  
4 is 9/30/2008.

5 MR. REID: Okay. Now, um, your Honor, I would offer  
6 Exhibit 67, pages 1 through 4, into evidence.

7 THE COURT: Is there any objection?

8 MS. CLEMENT: I don't think he has laid a foundation  
9 for this document being Mrs. Boice's.

10 THE COURT: That is true.

11 MS. CLEMENT: Or that it's accurate.

12 THE COURT: Well, on the basis of the first objection,  
13 let's go item by item.

14 MR. REID: Okay.

15 MS. CLEMENT: You know what, your Honor, I withdraw my  
16 objection. He can move it in.

17 MR. REID: Thank you, Counsel.

18 THE COURT: All right. Pages 1 through 4, which are  
19 numbered 01 through actually 04, are admitted on Exhibit 67.

20 **(Joint Exhibit 67, pages 1 through 4, were admitted into**  
21 **evidence.)**

22 MR. REID: Okay. Thank you, Counsel.

23 Thank you, your Honor.

24 If we could briefly display that to the jury, your  
25 Honor?

26 THE COURT: Go ahead.

27 MR. REID: Okay. Up on the top there -- Ms. Ford, if  
28 you could just bring up the top section?

- 1 Q (By MR. REID) So does this indicate it's an initial  
2 assessment on September 30th, 2008?
- 3 A Yes.
- 4 Q Okay. Now, if you go to the last page.
- 5 A I think it was September.
- 6 Q Yeah.
- 7 A Oh, okay.
- 8 Q I thought I said that.
- 9 A Oh.
- 10 Q Now -- so this was the -- the -- September of 2008, if  
11 you could pull that up, Ms. Ford?
- 12 Mrs. Boice's total points were what?
- 13 A 4725.
- 14 Q Okay. So her -- her points in September of 2008, um,  
15 in relation to her points in November of 2008, were they  
16 different?
- 17 MS. CLEMENT: Leading.
- 18 THE COURT: Overruled.
- 19 Q (By MR. REID) If you could turn to page 9 of that  
20 same exhibit?
- 21 A Page 9?
- 22 Q On the margin there, 009.
- 23 A Oh, okay.
- 24 Q Okay. So comparing the total points in the November  
25 Vigilant assessment to the total points in the September  
26 Vigilant assessment, can you tell the jury what the  
27 difference is?
- 28 A From 4725 to 100.50.

1 Q Okay. And did the total charges change between  
2 September and November?

3 A No. They have a range of points.

4 Q Concerning Emerald Hills, um, do you recall who the  
5 executive director was in, um, the time frame of the fall of  
6 2008?

7 A Nancy Cordova I think her name was. Nancy.

8 Q And do you have any memory of Nancy Cordova, um --  
9 well, do you have any memory of any complaints you had about  
10 Nancy Cordova?

11 A Operationally. I mean, we discussed them on our CTM  
12 team. I don't know if they met their operational quota.

13 Q Okay.

14 MR. REID: Your Honor, at this time I would ask --

15 THE WITNESS: Oh.

16 MR. REID: -- to show the jury, um --

17 THE COURT: Let's take our break right now while you  
18 are locating what it is you want to do.

19 Ladies and gentlemen, leave your notebooks on the  
20 chairs. Remember the admonitions. Be back at 3:15. We are  
21 in recess.

22 Could Counsel approach, please?

23 And you can step down. Thank you.

24 (Sidebar conference was held.)

25 (Court reporter switch.)

26

27

28

1           **(The following proceedings were then had in open**  
2           **court, in the presence of the jury.)**

3           THE COURT ATTENDANT: Please come to order.  
4           Department 45 is once again in session.

5           You may be seated.

6           THE COURT: Mr. Reid.

7           MR. REID: Thank you. I have just a few more  
8           questions.

9           Q.        (By MR. REID) I'm going to ask this a little bit  
10          differently, Miss Marshall.

11          Did you ever complain about Nancy Cordova, the  
12          Executive Director at Emerald Hills?

13          A.        I'm sorry. Did I ever complain about her?

14          Q.        Right.

15          A.        I don't recall if I did.

16          Q.        Okay. Did you ever complain about Peggy Stevenson,  
17          the Resident Care Director at Emerald Hills while  
18          Mrs. Boice was a resident?

19          A.        I don't recall if I did.

20          Q.        Did Nancy Cordova ever tell you that she was  
21          overwhelmed with her job?

22          A.        Yes, she did.

23          MR. REID: Your Honor, I would ask to show the jury  
24          from the deposition page 55, lines 9 through 11.

25          THE COURT: Whose deposition? The witness'?

26          MR. REID: From the witness, Doris Marshall.

27          MS. CLEMENT: Sorry, your Honor. Give me a sec.

28          (Pause.)

1 MS. CLEMENT: No objection.

2 THE COURT: Go ahead.

3 **(The following video excerpt was then played in open**  
4 **court):**

5 Q. Did you ever complain about Nancy Cordova, the  
6 Executive Director at Emeritus?

7 A. I don't recall.

8 **(Video stopped.)**

9 MR. REID: That's the wrong one. We're doing -- I  
10 apologize, your Honor. Lines 9 through 11.

11 MS. FORD: Oh, I'm sorry. Yeah.

12 **(The following video excerpt was then played in open**  
13 **court):**

14 Q. Do you remember Nancy Cordova --

15 A. I don't recall.

16 **(Video stopped.)**

17 MR. REID: Let me do it this way, your Honor. We'll  
18 speed this up.

19 I'd like to read from Miss Marshall's deposition of  
20 March 30th, 2012, page 9 -- page 55, lines 9 through 11.

21 THE COURT: Any objection?

22 MS. CLEMENT: No.

23 THE COURT: Go ahead.

24 MR. REID: Question: Do you remember Nancy Cordova  
25 telling you that she was overwhelmed with her job?

26 Answer: I don't recall.

27 Q. (By MR. REID) All right. Next question: Do you  
28 remember Peggy Stevenson telling you that she was

1 overwhelmed with her job?

2 A. I don't recall or...

3 Q. Okay.

4 MS. CLEMENT: Do we have a question pending?

5 Q. (By MR. REID) While you were the regional director  
6 OF quality services for Emeritus, in the division involving  
7 Emerald Hills, did you have complaints from the nurses that  
8 worked under you that the staff did not have the  
9 qualifications to perform the job duties that they were  
10 being asked to do?

11 MS. CLEMENT: Is this -- I'm sorry. I didn't  
12 realize that we were going on to something else.

13 Are these the same page and lines you were reading?

14 MR. REID: I just asked a question.

15 MS. CLEMENT: I'm sorry.

16 THE COURT: Can you answer?

17 THE WITNESS: I'm sorry. Could you repeat that,  
18 please.

19 Q. (By MR. REID) Did you have any complaints from the  
20 nurses that worked under you that the staff did not have  
21 the qualifications to perform the job duties that they were  
22 being asked to do?

23 A. Yes.

24 Q. Okay.

25 MR. REID: I would like permission, your Honor, to  
26 show page 61 of Ms. Marshall's deposition, lines 5 through  
27 9.

28 THE COURT: Any objection?

1 MS. CLEMENT: No.

2 THE COURT: Okay. Go ahead.

3 MR. REID: Thank you.

4 (Pause.)

5 MR. REID: Not working?

6 MS. FORD: Well, that's not --

7 MR. REID: I'll do it the old fashioned way, your  
8 Honor.

9 MS. FORD: No, I do. I have it. I'm sorry. I have  
10 it. Five through nine.

11 MR. REID: Yes.

12 (Pause.)

13 MR. REID: Okay. I apologize. May I read that  
14 section, your Honor?

15 THE COURT: Yes.

16 MR. REID: Question: Did you have complaints from  
17 the nurses that worked under you that the staff did not  
18 have the qualifications to perform the job duties that they  
19 were being asked to do?

20 Answer: No, that I recall.

21 Q. (By MR. REID) Okay. The next question I have for  
22 you: Did you have specific complaints from the nurses that  
23 worked under you that the med techs were not qualified to  
24 be passing medications?

25 MS. CLEMENT: Leading.

26 THE COURT: She can answer.

27 THE WITNESS: I'm sorry. Did the med techs have  
28 their qualifications?

1           Could you repeat that, please.

2       Q.       (By MR. REID)   Yes.

3           Did you have complaints from the nurses that worked  
4       under you that the med techs were not qualified to be  
5       passing medications?

6       A.       No.

7           MR. REID:   Okay.   Thank you.   That's all the  
8       questions I have.

9           THE COURT:   All right.   Miss Clement, any redirect?

10          MS. CLEMENT:   Sure.   Thanks.

11                        REXCROSS-EXAMINATION

12       BY LESLIE A. CLEMENT, Attorney at Law, Counsel on behalf of  
13       the Plaintiffs:

14       Q.       You did actually have nurses complain to you that  
15       they felt that the -- or strike that.

16           You did have med techs tell you that they felt they  
17       weren't qualified, correct?

18       A.       Yes.

19       Q.       About that Vigilant -- and I'm not going to put it up  
20       there.   I'll spare you all.   That Vigilant, I think that's  
21       Exhibit Number 67 that we've moved in.

22           Do you have that handy up there?

23       A.       Yes.

24       Q.       Okay.

25           MR. REID:   Yes.

26       Q.       (By MS. CLEMENT)   Now, who can access that Vigilant  
27       program?

28       A.       The regional care director, the executive director,



1 regional, and above.

2 Q. When you say "above," do you mean like Lisa Hulse  
3 could access it?

4 A. Yes.

5 Q. Budgie Amparo?

6 A. Yes.

7 Q. And that Vigilant for Mrs. Boice, what does it say  
8 the date that she was admitted? On the top, first page of  
9 67?

10 A. The initial assessment -- oh, the move-in date. I'm  
11 sorry. 9 -- September 30th of 2008.

12 Q. Okay. And is that -- what's the print date on that  
13 document?

14 A. August 13th, 2010.

15 Q. And do you -- is that Vigilant, if it's actually done  
16 at the time a resident is in the facility, is that supposed  
17 to be printed and made part of the resident's chart?

18 A. Yes.

19 Q. And that should have been produced to the Boice  
20 family when they requested Mrs. Boice's records?

21 MR. REID: Well, that lacks foundation, your Honor.

22 THE COURT: She can answer, if she can.

23 THE WITNESS: Yes. It's the individual service  
24 plan. So, yes.

25 Q. (By MS. CLEMENT) So that actually should have been  
26 given to the family when they requested the records, if it  
27 existed at that time, true?

28 A. Oh, yes. That's...

1 Q. And it should have actually been produced with  
2 Mrs. Boice's chart, the rest of her chart, by the custodian  
3 Brittany Fuchs who worked there in the records department,  
4 when we first requested the records, true?

5 A. Yes.

6 Q. Did anyone at Emeritus tell you, or any of the  
7 lawyers tell you why that wasn't produced at the time,  
8 either to the family or with her original chart at the  
9 custodian's deposition?

10 A. I don't know. I don't recall.

11 Q. Okay. So -- now, that accumulation of the points at  
12 the -- at the very last page, and that \$1500, that's not an  
13 indication of what Mrs. Boice was actually paying, is it?

14 A. No. Well -- no.

15 Q. So a number of lawyers -- you were talking about a  
16 number of lawyers that you've had to work with in this case  
17 for Emeritus.

18 The first lawyer was Mr. Lauria?

19 A. It sounds familiar. Yes.

20 Q. Tony?

21 A. Yes.

22 Q. Okay. And then they hired a different law firm.  
23 And that was Mr. LeVangie? Mr. Prout?

24 A. Prout. Yes.

25 Q. And then they had a different law firm.  
26 Mr. O'Flaherty?

27 A. Yes.

28 MR. REID: I don't think this is relevant, and it's

1 beyond the scope of my cross, your Honor.

2 MS. CLEMENT: I don't think so.

3 THE COURT: How is it relevant?

4 MS. CLEMENT: Well, it's relevant and it's exactly  
5 on point in the cross-examination -- or, excuse me, the --

6 THE COURT: No, no. Just tell me, as opposed to  
7 saying it is.

8 What is the relevance?

9 MS. CLEMENT: It goes to this witness' understanding  
10 and credibility, your Honor. And the documents that she  
11 was asked to produce.

12 THE COURT: You mean which law firm asked her to  
13 produce it?

14 MS. CLEMENT: Yes, and at what time. And what time  
15 period.

16 THE COURT: Okay. Go ahead.

17 Q. (By MS. CLEMENT) And then there was a Ms. Wells?

18 A. Yes.

19 Q. And then Mr. Fraser?

20 A. Yes.

21 Q. And Mr. Fraser was from a different law firm who  
22 represented you at your deposition, true?

23 A. Yes.

24 Q. And it was at your deposition that I asked you if  
25 you had been fired?

26 A. Yes.

27 Q. And you told me, "No."

28 A. Yes.

1 Q. And you told me, no, you hadn't.

2 True?

3 A. Yes. It's true.

4 Q. And then when -- you were subpoenaed to come to  
5 trial and you contacted me with your sister who is an  
6 attorney, true?

7 A. Yes.

8 Q. And the question you asked about was why -- *Why were*  
9 *you saying that I was fired?*

10 A. Yes.

11 Q. And your sister and you asked for me to send you the  
12 deposition transcript of Lisa Hulse, in which she went on  
13 for several pages to say why you were fired?

14 A. Yes.

15 MR. REID: Your Honor, I object to the leading  
16 portion of this questioning.

17 THE COURT: Overruled.

18 MS. CLEMENT: Is this 272?

19 Q. (By MS. CLEMENT) I think -- if you can look at 272  
20 quickly. I'm just going to switch right over to the CPR.  
21 And, again, I'm not going to put it up. I promise.

22 272. Okay.

23 272 is your letter to Nancy Cordova of September  
24 22nd, announcing the CPR?

25 A. Yes.

26 Q. Okay. And does that refresh your recollection as to  
27 when you personally did your section of the CPR for 2008?

28 A. A month later.

1 Q. And what's the date that you went in there,  
2 according to your letter? The first sentence.

3 A. Oh, October 1st.

4 Q. And was it true that not all of the participants in  
5 the CPR were able to attend on October 1st to do their  
6 section of the CPR for Emerald Hills?

7 A. Yes.

8 Q. And was one of those people who wasn't able to do  
9 her section Audrey Withers?

10 A. Yes.

11 Q. And that's why it was late and printed up late?

12 A. Yes.

13 Q. Your section, the quality services section, was done  
14 when you were physically in the building on October 1st?

15 A. Yes.

16 Q. Okay. Just -- I'm not going to put it up on the  
17 screen. I just want to ask you a quick question about  
18 this. Page ten of Exhibit 271, the CPR.

19 A. Page ten. Yes.

20 Q. This is your section -- the first page of your  
21 section, true?

22 A. Yes.

23 Q. Okay. And then that second section, "Health and  
24 Wellness Promotion," this was all about the resident  
25 activities?

26 A. Yes.

27 Q. And what part of the facility was this resident  
28 activities about?

1 A. This would have been about AL, assisted living.

2 Q. Okay. So the memory care's activities was reported  
3 by LaWanda Gavin in the memory care section?

4 A. Yes.

5 Q. And the -- it's my understanding the assisted living  
6 side of Emeritus at Emerald Hills had an activities  
7 director.

8 Was that your understanding?

9 A. Yes.

10 Q. And the Memory Care Unit did not?

11 A. At that time, no.

12 Q. Was it your understanding that the caregivers were  
13 supposed to be activity directors, as well as caregivers,  
14 at that time, at Emeritus, in the Memory Care Unit?

15 A. They were doing activities.

16 THE COURT REPORTER: I need you to repeat it, ma'am.

17 THE WITNESS: They did the activities. They didn't  
18 get the title as activities director.

19 Q. (By MS. CLEMENT) Okay. I'm just going to whip  
20 through here, a few quick other points.

21 On examination by Mr. Reid, you indicated that you  
22 would go to facilities that were considered high risk, to  
23 visit them. And you were told to do that -- that was on  
24 your weekly phone calls. That was part of the conference  
25 calls you'd have?

26 A. Yes.

27 Q. And what did "high risk" mean for Emeritus in their  
28 language?

1 A. Communities that had concerns, such as, occupancy,  
2 litigations, ethics first, resident concerns.

3 Q. You talked about, as part of your responsibilities,  
4 trying to put systems in place in the facilities to help  
5 the caregivers and the residents that lived there; is that  
6 right?

7 A. Yes.

8 Q. Did you feel you were able to make sure that the  
9 systems were in place 24/7, in all ten to thirteen  
10 facilities you were responsible for?

11 A. No.

12 Q. Were there facilities that you felt needed to have  
13 at least one nurse, and in some facilities two nurses?

14 A. Yes.

15 Q. And did you share that concern?

16 A. Yes.

17 Q. And who did you share that concern with?

18 A. The community -- the community CTM, regional CTM,  
19 and VPCTM.

20 Q. So that would be the vice presidents of the  
21 divisional, the regional team, and the facilities  
22 themselves?

23 A. Yes.

24 Q. As part of your Vigilant -- strike that. Excuse me.

25 As part of your CTM that you did, on page 11, you  
26 found that they were not in compliance on item number six,  
27 for using -- doing ongoing Vigilant assessments.

28 That's page 11 of 271. The 2008 CPR.

1           So in other words, when you went in there on  
2   October 1st and did your comprehensive process review, you  
3   found that the Emerald Hills facility was not in compliance  
4   in using the Vigilant assessment tool?

5           I'm on page 11.

6   A.       Of 68?

7   Q.       Page 11 of 68, item number six. The first half --

8   A.       Yes.

9   Q.       Okay. And was it your experience at Emeritus that a  
10   lot of the employees just didn't know how to use the  
11   Vigilant program?

12   A.       Yes.

13   Q.       And you attended meetings not only by phone, but you  
14   also went to meetings in person to talk about the concerns  
15   and the goals of Emeritus?

16   A.       Yes.

17   Q.       Did you also attend meetings in Seattle?

18   A.       Yes.

19   Q.       And in Seattle, did you have meetings where the  
20   chief executive officer and founder of the company, Dan  
21   Baty, was present?

22   A.       Yes.

23   Q.       And did he express to you his opinion of what he  
24   thought of the California division?

25   A.       Yes.

26   Q.       And what did he say?

27   A.       I think something like it's a shit hole state or  
28   communities.



1 (Laughter.)

2 Q. (By MS. CLEMENT) Were you ever told on your  
3 conference calls with the division and Seattle that  
4 California was driving down the stock price of Emeritus?

5 A. Yes.

6 Q. The -- the fax from Rovina -- Exhibit 270, Rovina  
7 Jones, the med tech at the Rancho Solano community.

8 Now, the Rancho Solano community, that was the  
9 biggest facility that you had responsibility for, true? In  
10 terms of the size, the capacity of residents?

11 A. That and Vacaville, I think it was. Yes.

12 Q. And was that Dan Baty's building?

13 A. Yes, it was.

14 Q. And you talked about -- on direct -- that you went  
15 in in response to Rovina Jones' letter and her concerns  
16 about the conditions in the facility.

17 Can you tell us, was that the first time you'd heard  
18 of problems about Rancho Solano?

19 A. No, it's not.

20 Q. What concerns had you heard about Rancho Solano with  
21 regards specifically to the dispensing of medications when  
22 you first started working with the company?

23 A. The med room wasn't in compliance. They had  
24 medications that needed to be destroyed, that weren't  
25 destroyed. They also had MARs, or medication  
26 administration records that were handwritten. And to  
27 transcribe an order, it had to be a licensed person.

28 And --

1 Q. Wait. Just hold up there.

2 Does that mean that unlicensed people were  
3 transcribing physician's orders?

4 A. If there wasn't a nurse in the community. The  
5 records in the med room regarding communication between the  
6 doctors, it was a systems concern.

7 Q. Now, you said that you met with Rovina Jones as part  
8 of a CTM, collaborative team management approach.

9 Was there -- was there an increase in the staff at  
10 Rancho Solano in response to Rovina Jones' concerns?

11 A. I don't believe there was.

12 Q. When you were looking for records for Mrs. Boice in  
13 this litigation, were there some records that you found  
14 called "flex notes"?

15 A. Yes.

16 Q. What were flex notes?

17 A. These are notes that caregivers or med techs would  
18 write on that wouldn't have like an Emeritus logo. It's  
19 like their own little note sheets or binder paper.

20 Q. Would that be part of like a 24-hour communication  
21 book?

22 A. Yes.

23 Q. Did you also find things when you were looking for  
24 Mrs. Boice's records like skin sheets, shower logs, things  
25 like that?

26 A. Yes, we did.

27 Q. Did anyone give you any instruction about whether or  
28 not you were supposed to produce those flex notes, in other

1 words, notes that were not -- about Mrs. Boice, but were  
2 not on Emeritus' logo?

3 THE COURT: I'm sorry. Notes that were not about  
4 Mrs. Boice?

5 MS. CLEMENT: That were about Mrs. Boice, but were  
6 not on the Emeritus logo forms.

7 THE COURT: Okay. That's not what you said in the  
8 question.

9 MS. CLEMENT: Okay. I apologize. I'll rephrase.  
10 Thank you, Judge.

11 THE COURT: All right.

12 Q. (By MS. CLEMENT) Did anyone tell you what to do  
13 with the flex notes, in other words, notes written by the  
14 care staff about Mrs. Boice that were not written on  
15 Emeritus' logo?

16 A. Yes.

17 Q. What were you told?

18 A. Well, I'm not sure. I think I called Lisa to find  
19 out what these flex -- what to do with them. And that's  
20 when I found out they're not a part of an Emeritus  
21 document, a official document. So there's no reason to  
22 keep flex notes, or we shouldn't be keeping flex notes. I  
23 think that's it.

24 Q. Did Miss Hulse instruct you to shred those records  
25 regarding Mrs. Boice?

26 A. She told me --

27 THE COURT REPORTER: I'm sorry. Repeat it. Did  
28 not?

1 THE WITNESS: -- we did not need to keep them.

2 Q. (By MS. CLEMENT) And so were they not then kept?

3 A. I'm assuming if we don't have them, they're not  
4 kept.

5 Q. But they did exist at one time because you saw them?

6 A. Yes.

7 MS. CLEMENT: Thank you very much.

8 THE WITNESS: Yes.

9 MR. REID: Very briefly.

10 FURTHER REDIRECT EXAMINATION

11 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
12 Defendants:

13 Q. How many flex notes did you find?

14 A. I couldn't give you a numerical number.

15 Q. What did they say?

16 A. At the time, I didn't keep the flex notes, so...  
17 They were regarding residents -- the residents' care.

18 Q. Okay. And so did you throw them away?

19 A. I left everything at the executive director's and  
20 just gave my -- I was supposed to take everything I got and  
21 leave it in the executive director's office in a box, label  
22 the box and let them know that I've communicated what I've  
23 done.

24 Q. Have you --

25 A. And --

26 Q. Go ahead. I'm sorry. I didn't mean to interrupt.

27 A. There's another attorney's office that was there  
28 with me, at the time we were going through the boxes

1 together. It was a gentleman. A bald head.

2 Q. Well, that wasn't me.

3 A. It wasn't you. No.

4 (Laughter.)

5 Q. (By MR. REID) There was a lot of boxes of a lot of  
6 documents in a big room at Emerald Hills.

7 MS. CLEMENT: Leading.

8 THE COURT: Sustained.

9 Q. (By MR. REID) Describe the storage room that you  
10 were sorting through to try to find records on this case.

11 A. There's one outside of the community and one in the  
12 community, storage room. So within the community, one was  
13 like a closet. And one was up on the third floor in a  
14 room. Resident room.

15 Q. I'm just trying to get an image of how orderly or  
16 not orderly these documents were.

17 Can you tell the jury?

18 MS. CLEMENT: Objection. It's vague.

19 THE COURT: She can answer.

20 THE WITNESS: Some were orderly, some weren't.

21 Q. (By MR. REID) Okay. Now, when Miss Clement was  
22 asking you these questions, you got through them pretty  
23 quick. Were those the topics that you talked to  
24 Miss Clement about at lunchtime?

25 A. No, we didn't talk about like the CPR, or this form  
26 or --

27 Q. Did she go over her list of questions with you and  
28 ask you how you'd answer them, at lunch today?

1 A. She gave me questions, yes.

2 Q. Was your sister there?

3 A. Today?

4 Q. Yeah.

5 A. No.

6 MR. REID: That's all the questions I have. Thank  
7 you.

8 THE COURT: Anything else, Miss Clement?

9 MS. CLEMENT: No, your Honor.

10 THE COURT: Ladies and gentlemen, questions, please,  
11 from you. Write them out. And Terrance will pick them up.  
12 There's one more over there.

13 THE COURT ATTENDANT: Okay.

14 THE COURT: Counsel approach, please.

15 (Whereupon an unreported bench conference was then  
16 had in open court between the Court and counsel.)

17 THE COURT: Okay. Miss Marshall, we allow our  
18 jurors to ask questions if they are confused or they need  
19 some clarification. And you may feel that you have already  
20 answered these questions, but please go ahead and answer  
21 them again. I'm going to ask you the question. If you  
22 would then turn and respond to the jury.

23 All right. This juror wants to focus your attention  
24 on the CPR document that we saw earlier today. And the  
25 question is: Was the CPR ratings based on a few random  
26 files or based on a review of all residents' files?

27 THE WITNESS: Random files. Three to five.

28 THE COURT: With the reference to items dealing with

1 colostomy and urinary catheters, again, does this --  
2 sometimes there was a notation that said N, slash, A -- or  
3 I assume "not applicable."

4 THE WITNESS: Yes.

5 THE COURT: Does this mean that for the few random  
6 files you looked at, it was not applicable? Or does it  
7 mean that there were no patients in the facility who had  
8 these conditions?

9 THE WITNESS: It's a combination of both. We talked  
10 to the RCD. And based on the Vigilant assessment and her  
11 assessment, it's anybody who's in the community that has a  
12 catheter or colostomy. And we also look at charts.

13 THE COURT: We saw the score entry on one of the  
14 documents. At the beginning, it appeared Mrs. Boice had a  
15 rating or a score -- I'm sorry -- the document had a score  
16 of 47.25. And then at the end of a 30-day evaluation, it  
17 had a score of 100.50.

18 This juror wants to know if this type of change is  
19 unusual?

20 THE WITNESS: No. It's a range. So unless they've  
21 gotten areas that were either missed or new areas that  
22 would -- that they assessed, that would raise their Vigilant  
23 assessment. If they talked to the family members and they  
24 want them to take on more responsibilities, I mean, there  
25 was a reason why it went up the points difference.

26 THE COURT: This juror wants you to refresh his or  
27 her recollection.

28 What is Vigilant?

1           THE WITNESS: Vigilant is an assessment tool Emeritus  
2       used to see how much care a resident would need if they  
3       come into the building. But not just their care. Let's  
4       say if they needed reminders, or if they needed laundry  
5       done, or if they wanted the community to take over some  
6       finances for them, so it's a combination of things.

7           THE COURT: If every time a person in the Memory  
8       Care Unit who is not able to take their own medication  
9       needs to take medication and the nurse is not available,  
10      who administers the medications?

11          THE WITNESS: Twofold. If the resident has the  
12      inability to administer their own medications, then a  
13      licensed professional should do it.

14          THE COURT: Okay. But a licensed professional being  
15      who?

16          THE WITNESS: We can bring in a nurse from outside  
17      the community, or I'd have to come in.

18          THE COURT: And if neither of those persons are  
19      there or available, what happens?

20          THE WITNESS: Let's say a person's on hospice, we  
21      have the hospice agencies comes in. If, um -- some family  
22      members prior to discharge were taught to do a particular  
23      medication task, we would ask the family members.  
24      Otherwise, we'd have to get the medications to the  
25      resident. They shouldn't go without the medications.

26          THE COURT: There was some testimony regarding  
27      facilities that were high risk.

28          Do you recall that?



1 THE WITNESS: Yes, ma'am.

2 THE COURT: Was Emerald Hills considered a high risk  
3 facility?

4 (Pause.)

5 THE WITNESS: I think at one time Emerald Hills was  
6 a high risk community. Yeah.

7 THE COURT: Do you recall when that was, from when  
8 to when?

9 THE WITNESS: I want to say maybe 2009, because it  
10 was before I left.

11 THE COURT: There was some testimony regarding time  
12 frames for insulin injections.

13 Why must a patient or resident administrator be able  
14 to administer -- why must a patient be able to administer  
15 his or her own insulin?

16 THE WITNESS: (No audible response.)

17 THE COURT: The question is basically, put another  
18 way, why can't somebody else give it to them?

19 THE WITNESS: Okay. They can. It would all depend  
20 on --

21 THE COURT: When you say "they," who are we talking  
22 about?

23 THE WITNESS: Okay. Let's say -- the nurse in the  
24 community would be able to give 'em an insulin. Hospice.  
25 I mean, a home health agency. Any licensed skilled  
26 professional has to do an invasive procedure, like an  
27 injection.

28 THE COURT: Okay. I think this juror's recalling

1 testimony where -- when there were med techs around, that  
2 the -- and, counsel, correct me if I'm wrong -- that the  
3 med techs were not supposed to administer insulin  
4 injections. They can only do certain tasks related to it.

5 Why is that?

6 THE WITNESS: Med techs aren't licensed  
7 professionals. They have a 16-hour training from Omnicare.  
8 And insulin has to -- the insulin that that resident would  
9 have been on would have been an injection.

10 THE COURT: How long was your typical workday?

11 THE WITNESS: We know that it's 24/7. So, um, 16  
12 hours I spent -- you know, if I had to give a rough  
13 estimate -- a day. This is why the e-mails were at 4:00 in  
14 the morning or 12:00.

15 THE COURT: After receiving the October 2008 CPR  
16 results for Emerald Hills, what, if any, conclusions did  
17 you draw about what needed to be done at Emerald Hills?

18 THE WITNESS: Each area is ranked with a score at  
19 the end. And depending on that, we -- I would consult with  
20 like the dining service director, um, these individuals  
21 outside the community, to see what areas needed to be  
22 upgraded.

23 THE COURT: I don't think this is the generic  
24 question. This is very specific to Emerald Hills.

25 After that October 2008 CPR, what, if anything,  
26 did you think Emerald Hills needed help with?

27 THE WITNESS: Memory care, dining services, quality  
28 services operations, human resources. Each tab would

1 need -- I -- areas of opportunity or improvement.

2 THE COURT: This juror says that they've heard a lot  
3 of questions and testimony about staffing issues.

4 To your knowledge, in 2008, was the staffing budget  
5 at Emerald Hills maxed out, meaning that there was no  
6 additional money available to hire more labor?

7 THE WITNESS: I don't know if they were maxed out.  
8 Operations dealt with the budget numbers, how much it was  
9 overall.

10 THE COURT: Did you enjoy your tenure at Emeritus as  
11 the regional director of quality services?

12 THE WITNESS: Initially when I started, yes. I  
13 learned a lot from it.

14 THE COURT: If you did not have some of the personal  
15 challenges that you shared with us, do you think you would  
16 have stayed at Emeritus?

17 THE WITNESS: Oh, no. No. There was -- no. It  
18 takes more than one person to change. It takes a group of  
19 people, and I couldn't have done that alone.

20 THE COURT: Exhibit 275, which was the e-mail  
21 exchange from Nicole Jackson on January 21st, 2009 that the  
22 jurors saw, there is at the bottom of the page -- do you  
23 have 275 there? Can you grab that?

24 THE WITNESS: 275.

25 THE COURT: Can somebody put that up for us, please.

26 MS. CLEMENT: Yes. The bottom of the page, Judge?

27 THE COURT: The bottom of page, 275. Keep the  
28 last -- yeah. That will do it.

1 MS. CLEMENT: Just the bottom section.

2 THE COURT: That's fine.

3 MS. CLEMENT: Is that big enough?

4 THE COURT: Yes.

5 There is a phrase, *Keep the door shut*.

6 How did you interpret this phrase when you saw it  
7 written in all caps and ending with an exclamation mark?

8 THE WITNESS: It's important. Anything bolded and  
9 capitalized means that it's an eye-catcher and it's  
10 something that is important.

11 THE COURT: Okay. May we get the lights, please.

12 What is your understanding of why Emeritus installed  
13 a stock exchange app on your company cell phone?

14 THE WITNESS: My impression for that is -- the  
15 company monitors their growth based on their stocks. And  
16 based on the fact that they gave us shares in lieu of a  
17 bonus, I think I got 1500 shares that I could touch in four  
18 years, and it makes an employee that more diligent in  
19 working if the stocks go up, making more money.

20 THE COURT: Why did you leave the company?

21 THE WITNESS: Other than personal reasons, um, when  
22 I came into Emeritus, I believed in the fact of having the  
23 discussion we did with Budgie. And once I got in there,  
24 they weren't all that I perceived them to be. So as a --  
25 not even as a nurse. Just as a human being, there's some  
26 things that just challenged my ethics and my morals in  
27 staying there, you know. I couldn't get things done. So  
28 cut your losses.

1 THE COURT: This juror wanted to know the reason for  
2 tearing up the skin sheets. But I think -- did you testify  
3 that the skin sheets were, in fact, torn up?

4 THE WITNESS: I think -- oh, I'm sorry.

5 THE COURT: Respond to them.

6 THE WITNESS: Oh.

7 THE COURT: There was some testimony earlier about  
8 skin sheets. And this juror's question is: What is the  
9 reason for tearing up the skin sheets?

10 THE WITNESS: There's only certain documentation  
11 legally you have to keep, and that wasn't one of them.

12 THE COURT: Is it your understanding that  
13 Emerald Hills is a "for profit" company?

14 THE WITNESS: Yes.

15 THE COURT: Was understaffing -- strike that.

16 Is understaffing a typical complaint at most  
17 assisted living facilities that you have worked at?

18 THE WITNESS: I've only worked at Emeritus. So,  
19 yes.

20 THE COURT: Okay. Which of the documents that we  
21 looked at today were documents prepared at the direction of  
22 the Department of Social Services? For example, was the  
23 Vigilant prepared at the direction of Social Services?

24 THE WITNESS: No. None of them were from the  
25 Department of Social Services.

26 THE COURT: So the CPR, for example, whose document  
27 was that?

28 THE WITNESS: The CPR is a Emeritus document. It

1 just incorporates what the State would look for if they  
2 came in, and more.

3 THE COURT: Were you ever there when the Department  
4 of Social Services came in?

5 THE WITNESS: Yes, we were to be notified. Every  
6 time the State walks in, they needed to call the regional  
7 team. And one of us should be there. Most of the times we  
8 were there.

9 THE COURT: What is it that Miss Clement talked to  
10 you about before being a witness in this case?

11 THE WITNESS: She talked to me -- the questions in  
12 the deposition, that they ended. And if I recall -- I'd  
13 have to look at my deposition. I couldn't recall the  
14 questions that she asked me.

15 THE COURT: Did she in any way prepare you for your  
16 testimony before this court?

17 THE WITNESS: Yes, we -- well, we reviewed what can  
18 happen. I've never been to court, so she reviewed to me  
19 the process that happens and questions that may be  
20 answered, could be answered. And the first I've learned  
21 that juries (sic) will be asking questions.

22 THE COURT: Okay. Are you personally under any type  
23 of investigation that would have required you to have your  
24 own attorney in this case?

25 THE WITNESS: No. I don't -- my sister's an  
26 attorney and she's there for the support the family. So my  
27 understanding is witnesses really don't need an attorney.  
28 So, no.

1 THE COURT: Would you consider the walk-through  
2 inspections that you did while you were at Emeritus to be  
3 in-depth inspections?

4 THE WITNESS: No.

5 THE COURT: Would you consider them to have been  
6 reasonable in scope inspections?

7 THE WITNESS: Yes.

8 THE COURT: Did Miss Clement go over with you all of  
9 your documents that you maintained at your home or on your  
10 computer and decide which documents you should bring with  
11 you to trial?

12 THE WITNESS: No, she didn't go over all my  
13 documents.

14 THE COURT: Did -- well, I'll rephrase this.

15 Who had the final say as to whether or not a person  
16 could be moved into the facility?

17 THE WITNESS: Operations. There would have --

18 THE COURT: Well, when you say "operations," are we  
19 talking -- who at the -- anybody at the facility level  
20 itself?

21 THE WITNESS: The executive director.

22 THE COURT: This juror is referring to Exhibit 270,  
23 which we did not place up on the overhead. This is the  
24 Rancho Solano incident report for June 13th, 2009, in which  
25 there was a listing of various things that happened.

26 The juror wants to know whether or not all those  
27 items were remedied to your satisfaction.

28 THE WITNESS: No.

1 THE COURT: Were any residents kept at Emerald Hills  
2 against their will?

3 THE WITNESS: Not that I can recall.

4 THE COURT: This is in reference to Exhibit 67.

5 THE WITNESS: Sixty-seven.

6 THE COURT: And that was the -- about a ten-page  
7 document regarding assessments, I think allegedly with  
8 respect to Mrs. Boice. Okay?

9 Would you consider the document 67 to be an  
10 appropriate assessment document for somebody coming in or  
11 living at Emerald Hills?

12 THE WITNESS: Yes.

13 THE COURT: Are these forms typically filled out by  
14 a registered nurse?

15 THE WITNESS: No, they're not.

16 THE COURT: Who typically fills them out?

17 THE WITNESS: It can be either the wellness  
18 coordinator, the resident care director, the executive  
19 director, or outside the community above, other than the  
20 sales and marketer.

21 THE COURT: Have you ever been asked to destroy any  
22 documents by anyone related to this case?

23 (Pause.)

24 THE WITNESS: I was instructed that documents  
25 weren't needed if they weren't Emeritus'.

26 THE COURT: The question is: Were you asked to  
27 destroy any documents?

28 THE WITNESS: No.



1           THE COURT: Are you aware of whether or not there  
2 are any staff ratios mandated by the Department of Social  
3 Services for assisted care facilities?

4           THE WITNESS: They don't mandate ratios in assisted  
5 living. They mandate adequate staffing, is how they put  
6 it.

7           THE COURT: In the time frame that Mrs. Boice was in  
8 residence, could you estimate for us the ratio of staff to  
9 clients?

10          THE WITNESS: One to fifteen, I'd have to assume.  
11 I'd have to know how many were in the building at that  
12 time.

13          THE COURT: Okay. So that would be a guess right  
14 now?

15          THE WITNESS: Yeah, it's a guess.

16          THE COURT: Okay. Then please don't guess.

17          THE WITNESS: Okay.

18          THE COURT: Is it your understanding that the higher  
19 the acuity level of the patients, the more staff would be  
20 necessary?

21          THE WITNESS: Yes.

22          THE COURT: Were you involved -- were you personally  
23 involved in any corrective action arising from the CPRs  
24 done at Emerald Hills?

25          THE WITNESS: I'm sorry. Can you repeat that,  
26 please.

27          THE COURT: Were you -- were you personally involved  
28 in any corrective action arising as a result of the CPRs

1 done on Emerald Hills?

2 THE WITNESS: Yes.

3 THE COURT: What were -- what was that?

4 THE WITNESS: If they needed training, like, um,  
5 related -- related to the CPR, then I'd have to arrange the  
6 training for that or give the med tech training for it.

7 THE COURT: You stated that staff was afraid of Lisa  
8 Hulse. Was the fear that they felt based on losing their  
9 job or something else?

10 THE WITNESS: A combination of both.

11 THE COURT: What was the something else?

12 THE WITNESS: Well, the something else would be more  
13 a what was said versus how it was said. So as an example,  
14 if they wanted to -- if she asked them a question or to  
15 explain, like in the med room, it may have been presented  
16 direct to her in the sense of what was going on without  
17 having -- or knowing what system's in place to put in  
18 place. She likes if you come with a problem, come with a  
19 solution to it type of thing.

20 THE COURT: I'm not sure I understand the answer.  
21 Why would they be afraid of that?

22 THE WITNESS: Because they have a very pleasing  
23 attitude. They want to please the VPs that come into the  
24 community. Um, they also want to be respectful. And  
25 basically these are people that know they're in a  
26 hierarchal level. So they know that -- vice presidents  
27 usually have more control than they have in securing not  
28 only their job but how they're perceived by them.

1 THE COURT: Were any of the staff afraid for using  
2 the ethics hotline?

3 THE WITNESS: Eventually they did. Eventually.

4 THE COURT: Why was that?

5 THE WITNESS: Well, originally, they didn't realize  
6 they were calling up to Seattle, the corporate office with  
7 Vigilant. So they found out over a series of time that  
8 people that called it seemed to be reprimand -- seemed --  
9 something happened, in that sense.

10 THE COURT: Do you know of any Emeritus community  
11 under your jurisdiction that complained about understaffing  
12 and that was subsequently allowed more staff as a reaction  
13 to that complaint?

14 THE WITNESS: I want to say Rancho Solano was --  
15 yes.

16 THE COURT: You mentioned that communities had color  
17 codes. What color was Emerald Hills and what did that  
18 mean?

19 THE WITNESS: We had different colors. It was red,  
20 green and yellow. Red was a hot community that needed  
21 attention now. Yellow was, you know, um, one that would be  
22 on the radar, but we didn't actually need to be there in  
23 the community.

24 THE COURT: And what about green?

25 THE WITNESS: Green, we knew we should keep an eye  
26 on. All of them should be on a conference call. And the  
27 first conference call would be red communities, then green  
28 communities, then yellow communities. So it was like a

1 ranking system for us also.

2 THE COURT: Okay. What color was Emerald Hills when  
3 you were the regional director?

4 THE WITNESS: Emerald Hills went from a green to a  
5 yellow. I'm sorry. Green to a red. So they were on our  
6 radar, but they increased up our radar.

7 THE COURT: And when did they go from green to red?

8 THE WITNESS: I want to say about 2009, the end of  
9 2009.

10 THE COURT: This juror is referring to Exhibit 274,  
11 in which the document -- I think we put that one up before.

12 Can we put that up, please. 274.

13 Okay. They are referring to the second and third  
14 line: Never send the record to the requesting attorney,  
15 legal representative, or respond directly to a subpoena.

16 Could you explain for this juror, if you know, why  
17 that was the rule.

18 THE WITNESS: Our resident records had to be sent  
19 to -- my understanding, sent to Seattle, the corporate  
20 office, to be reviewed first. And it's usually reviewed  
21 for potential litigations, any -- information exactly what  
22 the resident wants, if they didn't need the whole chart.  
23 So it depended upon what they asked for is what they got.

24 THE COURT: Were -- we can get the lights now,  
25 please. Thank you.

26 Were potential new residents told a nurse was in the  
27 facility while you were the regional care director at  
28 Emeritus?

1 THE WITNESS: Not in all the communities, but they  
2 were told that a nurse was on-call at all times.

3 THE COURT: Were potential residents told that a  
4 nurse position was open or vacant in their facility when  
5 they were considering moving in?

6 THE WITNESS: I don't know if they were told a nurse  
7 wasn't there and we were looking for one.

8 THE COURT: What does Vigilant actually stand for? I  
9 mean, does it mean something?

10 THE WITNESS: The initials?

11 THE COURT: Yes.

12 THE WITNESS: I don't know.

13 THE COURT: Okay. While you were regional director,  
14 did any families ask to stay in a facility when it was no  
15 longer appropriate for them to be there?

16 THE WITNESS: Oh, yes.

17 THE COURT: If so, were they allowed to stay?

18 THE WITNESS: For a period of time. Emeritus would  
19 put individuals in a hotel if they needed to -- no longer  
20 could pay to be in the community. We can't just put them  
21 out on the -- put them out. So they can make arrangements  
22 to put individuals in a hotel and pay for a few months or a  
23 series of months for them.

24 THE COURT: So your response was based on ability to  
25 pay?

26 THE WITNESS: Yes.

27 THE COURT: Is there any other reason why it was no  
28 longer appropriate for people to stay?

1 THE WITNESS: If they were a higher level of care,  
2 let's say if they needed to go -- the doctor referred them  
3 to a skilled community, it would be another reason.

4 THE COURT: Who maintains the signed CPRs for  
5 Emeritus?

6 THE WITNESS: My impression is besides the regional  
7 director of quality services, myself, it's also sent to the  
8 VPO and to Budgie up to Seattle. And by that, I mean  
9 Budgie or the quality services department.

10 THE COURT: And who maintains the signed Vigilant  
11 copies?

12 THE WITNESS: Both the community and its residents  
13 should have a copy. The residents' family members should  
14 have a copy.

15 THE COURT: Ladies and gentlemen, leave your  
16 notebooks on the chairs. Remember the admonitions. I will  
17 see you at 9:00 o'clock tomorrow morning.

18 Terrance, if you would ask the witness that is  
19 waiting out in the hall and her person with her to please  
20 come in as soon as the jurors leave.

21 We'll see you all tomorrow.

22 We'll see you tomorrow.

23 THE WITNESS: Thank you.

24 THE COURT: You're welcome.

25 **(The following proceedings were then had in open**  
26 **court, outside the presence of the jury.)**

27 (Doris Marshall exits the courtroom.)

28 THE COURT: Hello. Could I have your name, please.

1           **(The following proceedings were then had in open**  
2           **court, in the presence of the jury.)**

3           THE COURT ATTENDANT: All rise.

4           Department 45 of the Sacramento Superior Court is  
5 now in session. The Honorable Judge Judy Hersher  
6 presiding.

7           You may be seated.

8           THE COURT: All right. Miss Clement, we finished  
9 asking the jurors' questions yesterday.

10          Do you have any follow up?

11          MS. CLEMENT: Yes, your Honor. Just one question.

12                               TESTIMONY OF

13 DORIS MARSHALL, a witness called pursuant to 776 of the  
14 Evidence Code by the Plaintiffs:

15                               FURTHER RECROSS-EXAMINATION

16 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
17 the Plaintiffs:

18 Q.       Ms. Marshall, yesterday the jurors asked you a  
19 question that -- *Would you have stayed at Emeritus without*  
20 *your challenges, your personal challenges?* And you said --

21           THE COURT REPORTER: I can't hear you, Counsel.

22           MS. CLEMENT: I'm sorry. I'm looking down.

23 Q.       (By MS. CLEMENT) You said, *No. It takes more than*  
24 *one person to change, and I could not have done that alone.*

25           And in response to another question, you were asked,  
26 *How did it challenge your ethics and morals, such that you*  
27 *decided to cut your losses?*

28           And I'd just ask you, if you could, in your own

1 words, please explain what you meant by those statements to  
2 the jury.

3 A. Um, I think to the first one about a group more so,  
4 when I said, *I couldn't change it myself, it needs to be a*  
5 *group*, I was thinking more like a combination of people,  
6 like residents, family members, ex-employees. You know,  
7 outsiders. People that can see there needs to be a change  
8 and work collaboratively to have a change. So a group  
9 consists of all those individuals, in my eyes.

10 And the second part of that, could you repeat it?

11 MS. CLEMENT: Oh, yeah. I just took a note.

12 When you said that it challenged your ethics and  
13 morals, such that you decided to cut your losses, what did  
14 you mean by that?

15 A. You know, there's experiences that I had during  
16 Emeritus that I know that -- it's just some things that I  
17 didn't do. And, you know, there were -- you know, I've  
18 worked with better managers or VPs that I can learn from,  
19 that would allow me to grow. And it just didn't happen.  
20 So, um, experiences that I've had there wasn't what I  
21 wanted to emulate in a professional way. So I just wanted  
22 to cut my losses.

23 MS. CLEMENT: Thank you.

24 No further questions, your Honor.

25 THE COURT: Mr. Reid.

26 MR. REID: No further questions, your Honor.

27 THE COURT: Ladies and gentlemen, did you have any  
28 follow-up questions to the answers that our witness has



1 given?

2 Counsel, approach please.

3 (Whereupon an unreported bench conference was then  
4 had in open court between the Court and counsel.)

5 THE COURT: Yes. By the way, ladies and gentlemen,  
6 both sides of this case, counsel, have supplied the water  
7 for you so that you would stay hydrated. It gets pretty  
8 dry this time of year.

9 JURORS: Thank you. We appreciate it. Thank you.

10 THE COURT: Okay. This individual wants to know  
11 when there wasn't a full-time nurse available at the  
12 facilities, and assuming that there were patients -- well,  
13 let me ask this.

14 Were there patients who sometimes had to have  
15 medications three times a day, or twice a day?

16 THE WITNESS: Okay. Normally they're called  
17 "clients" or "residents." But, yes.

18 THE COURT: Okay. So were there some residents who  
19 had to have medication three times a day?

20 THE WITNESS: Yes.

21 THE COURT: Okay. So if there wasn't a nurse on  
22 staff, would a nurse come to the facility three times a day  
23 to give the residents the meds?

24 THE WITNESS: Yes. I'd have to go. I mean, I was  
25 in Lodi for a period of time and other communities at a  
26 period of time. So I'd leave my home, stay. Depending on  
27 where it is, I'd stay in the community or I'd come back.  
28 And if this medication was -- dealt with an invasive

1 procedure, the resident cannot do it themselves. I'd have  
2 to go in. Or at least get a nurse from another community  
3 to work that day shift. So it's just somebody will be  
4 there to, you know, give -- assist with the medications.

5 THE COURT: Okay. In your testimony you mentioned  
6 that your deposition was stopped at some point. This juror  
7 wants to know: If you know why, why was your deposition  
8 stopped?

9 THE WITNESS: Yes, it was stopped. And that was  
10 because -- it's legalese issues. The attorneys were  
11 talking over legal issues and couldn't come to an  
12 agreement. So I couldn't -- it was -- the communications  
13 between the attorneys is why it was stopped.

14 THE COURT: Okay. All right. Do you wish to follow  
15 up?

16 MS. CLEMENT: Just one question, your Honor.

17 FURTHER RECROSS-EXAMINATION

18 BY LESLEY A. CLEMENT, Attorney at Law, Counsel on behalf of  
19 the Plaintiffs:

20 Q. Miss Marshall, were you able to cover all the  
21 facilities in your region when residents needed medications  
22 three times a day, if there was no nurse in the building?

23 A. If there was more than one building that didn't have  
24 a nurse, no.

25 MS. CLEMENT: Thank you.

26 MR. REID: Now I have a question.

27 THE COURT: Okay.

28 ///

## 1 FURTHER REDIRECT EXAMINATION

2 BY BRYAN R. REID, Attorney at Law, Counsel on behalf of the  
3 Defendants:

4 Q. So in the circumstance -- now, do you ever remember  
5 two buildings not having a nurse at the same time?

6 A. Yes. Yes.

7 Q. Okay. So in that circumstance, if you were covering  
8 one building, who would cover another building?

9 A. I'd have to get a nurse that was in another  
10 building -- let's say, a nurse was in Rancho Solano -- to  
11 commute to that building.

12 Q. Thank you.

13 A. Or -- yeah.

14 MS. CLEMENT: No questions, your Honor.

15 THE COURT: Anything else, ladies and gentlemen?

16 Well, thank you for coming back down again.

17 May we excuse this witness?

18 MR. REID: Yes, your Honor.

19 MS. CLEMENT: Yes.

20 THE COURT: Thank you very much. You're excused.

21 THE WITNESS: Okay.

22 THE COURT: Who is our next witness?

23 MS. CLEMENT: Nancy Cordova, pursuant to 776.

24 THE COURT: All right.

25 MS. CLEMENT: And, your Honor, we have two exhibits  
26 we've stipulated to moving into evidence.

27 THE COURT: With -- you're going to be using with  
28 respect to this witness?